

THE GENERAL STATUTES OF NORTH CAROLINA

ANNOTATED

1996 CUMULATIVE SUPPLEMENT

Volume 14

Chapters 98 through 105B

Prepared under the Supervision of

The Department of Justice
of the State of North Carolina

BY

The Editorial Staff of the Publishers

Under the Direction of

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Annotated through 470 S.E.2d 425. For complete scope of
annotations, see scope of volume page.

**Place Behind Supplement Tab in Binder Volume.
This Supersedes Previous Supplement, Which
May Be Retained for Reference Purposes.**

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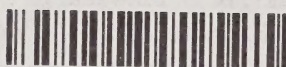
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Preface

This Cumulative Supplement to Volume 14 contains the general laws of a permanent nature enacted by the General Assembly through the 1996 Second Extra Session, which are within the scope of such volume, and brings to date the annotations included therein.

Amendments are inserted under the same section numbers appearing in the General Statutes, and new laws appear under the proper chapter headings.

Chapter analyses show all affected sections, except sections for which catchlines are carried for the purposes of notes only. An index to all statutes codified herein will appear in the Replacement Index Volumes.

A majority of the Session Laws are made effective upon ratification, but a few provide for stated effective dates. If the Session Law makes no provision for an effective date, the law becomes effective under G.S. 120-20 "from and after 30 days after the adjournment of the session" in which passed.

Beginning with the opinions issued by the North Carolina Attorney General on July 1, 1969, any opinion which construes a specific statute is cited as an annotation to that statute. For a copy of an opinion or of its headnotes write the Attorney General, P.O. Box 629, Raleigh, N.C. 27602.

The members of the North Carolina Bar are requested to communicate any defects they may find in the General Statutes or in this Cumulative Supplement and any suggestions they may have for improving the General Statutes, to the Department of Justice of the State of North Carolina, or to Michie, Law Publishers, Charlottesville, Virginia.

User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the North Carolina General Statutes, a User's Guide has been included in Volume 1. This guide contains comments and information on the many features found within the General Statutes intended to increase the usefulness of this set of laws to the user. See the main volume for the complete User's Guide.

Scope of Volume

Statutes:

Permanent portions of the General Laws enacted by the General Assembly through the 1996 Second Extra Session affecting Chapters 98 through 105B of the General Statutes.

Annotations:

Sources of the annotations to the General Statutes appearing in this volume are:

- North Carolina Reports through Volume 343, p. 303.
- North Carolina Court of Appeals Reports through Volume 121, p. 513.
- South Eastern Reporter 2nd Series through Volume 470, p. 425.
- Federal Reporter 3rd Series through Volume 83, p. 1423.
- Federal Supplement through Volume 924, p. 224.
- Federal Rules Decisions through Volume 165, p. 700.
- Bankruptcy Reports through Volume 195, p. 823.
- Supreme Court Reporter through Volume 116, p. 1711.
- North Carolina Law Review through Volume 74, p. 1319.
- Wake Forest Law Review through Volume 30, p. 1008.
- Campbell Law Review through Volume 18, p. 201.
- Duke Law Journal through Volume 45, p. 1088.
- North Carolina Central Law Journal through Volume 25, p. 100.
- Opinions of the Attorney General.

User's Guide

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North Carolina Reports through Volume 121, p. 413.
South Carolina Reports through Volume 470, p. 422.
Federal Supplemental Reports through Volume 121, p. 423.
Federal Rules Decisions through Volume 121, p. 424.
Bankruptcy Reports through Volume 121, p. 425.
Supreme Court Reports through Volume 121, p. 426.
North Carolina Law Review through Volume 30, p. 1005.
Wake Forest Law Review through Volume 12, p. 301.
Campbell Law Review through Volume 45, p. 1058.
North Carolina Federal Law Journal through Volume 25, p. 100.

Opinions of the Attorney General.

The General Statutes of North Carolina 1996 Cumulative Supplement

VOLUME 14

Chapter 98.

Burnt and Lost Records.

§ 98-2. Originals may be again recorded.

CASE NOTES

Cited in Harrelson v. Soles, 94 N.C. App. 557, 380 S.E.2d 528 (1989).

Chapter 99B.

Products Liability.

§ 99B-4. Knowledge or reasonable care.

CASE NOTES

Summary Judgment on Issue of Contributory Negligence Held Improper. —

Evidence that plaintiffs failed to exercise reasonable care under the circumstances in their use of asbestos-containing products because they continued to smoke cigarettes after the hazards of cigarette smoking and the relationship between cigarette smoking and asbestos exposure became widely known, and their smoking, combined with their exposure to asbestos-containing products, was a proximate cause of their injuries and could support a finding of contributory negligence. The district court erroneously did not permit defendant to es-

tablish this defense at trial, by granting partial summary judgment on the issue of contributory negligence. *Jones v. Owens-Corning Fiberglas Corp.*, 69 F.3d 712 (4th Cir. 1995).

Same — Not Shown. — Where plaintiff took no precautions in examining treadmill which she was thrown from and admitted that she was not thinking and was therefore not exercising ordinary care to protect herself from injury, trial court correctly granted summary judgment on the issue of plaintiff's contributory negligence. *Finney v. Rose's Stores, Inc.*, 120 N.C. App. 843, 463 S.E.2d 823 (1995).

Chapter 99D.

Civil Rights.

§ 99D-1. Interference with Civil Rights.

CASE NOTES

Cited in Kaplan v. Prolife Action League, 111 N.C. App. 1, 431 S.E.2d 828 (1993).

Chapter 100.

Monuments, Memorials and Parks.

Article 1.

Approval of Memorials, Works of Art, etc.

Sec.

100-2. Approval of memorials before acceptance by State; regulation of existing memorials, etc.; "work of art" defined; highway markers.

Sec.

100-12. Roads, trails, and fences authorized; protection of property.

100-13. Fees for use of improvements; fees for other privileges; leases; rules.

100-14. Use of fees and other collections.

100-15. Annual reports.

Article 3.

Mount Mitchell Park.

100-11. Duties.

ARTICLE 1.

Approval of Memorials, Works of Art, etc.

§ 100-2. Approval of memorials before acceptance by State; regulation of existing memorials, etc.; "work of art" defined; highway markers.

No memorial or work of art shall hereafter become the property of the State by purchase, gift or otherwise, unless such memorial or work of art or a design of the same, together with the proposed location of the same, shall first have been submitted to and approved by the North Carolina Historical Commission; nor shall any memorial or work of art, until so submitted and approved, be contracted for, placed in or upon or allowed to extend over any property belonging to the State. No existing memorial or work of art owned by the State shall be removed, relocated, or altered in any way without approval of the North Carolina Historical Commission. The term "work of art" as used in this section shall include any painting, portrait, mural decoration, stained glass, statue, bas-relief, sculpture, monument, tablet, fountain, or other article or structure of a permanent character intended for decoration or commemoration. This section, however, shall not apply to markers set up by the Board of Transportation in cooperation with the Department of Environment, Health, and Natural Resources and the Department of Cultural Resources as provided by Chapter 197 of the Public Laws of 1935. (1941, c. 341, s. 2; 1957, c. 65, s. 11; 1973, c. 476, s. 48; c. 507, s. 5; c. 1262, s. 86; 1977, c. 771, s. 4; 1979, 2nd Sess., c. 1306, ss. 3, 4; 1989, c. 727, s. 218(27).)

§ 100-8. Memorials to persons within 25 years of death; acceptance of commemorative funds for useful work.

Editor's Note. — Session Laws 1993, c. 561, s. 38 provides that, notwithstanding this section, of the funds appropriated by Chapter 561 to the Department of Cultural Resources for Somerset Place for the 1993-94 fiscal year, \$2,000 be allocated to provide an appropriate memorial at Somerset Place.

Session Laws 1993, c. 561, s. 23.1, as

added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

ARTICLE 3.

Mount Mitchell Park.

§ 100-11. Duties.

The Department of Environment, Health, and Natural Resources shall have complete control, care, protection and charge of that part of Mitchell's Park acquired by the State. (1915, c. 76; 1919, c. 316, s. 3; C.S., s. 6940; 1921, c. 222, s. 1; 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 218(28).)

§ 100-12. Roads, trails, and fences authorized; protection of property.

The Department of Environment, Health, and Natural Resources is authorized and empowered to enter upon the land hereinbefore referred to, and to build a fence or fences around the same, also roads, paths, and trails and protect the property against trespass and fire and injury of any and all kinds whatsoever; cut wood and timber upon the same, but only for the purpose of protecting the other timber thereon and improving the property generally. (1919, c. 316, s. 5; C.S., s. 6942; 1921, c. 222, s. 1; 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 218(29).)

§ 100-13. Fees for use of improvements; fees for other privileges; leases; rules.

The Department of Environment, Health, and Natural Resources is further authorized to charge and collect fees for the use of such improvements as have already been constructed, or may hereafter be constructed, on the park, and for other privileges connected with the full use of the park by the public; to lease sites for camps, houses, hotels, and places of amusement and business; and to make and enforce such necessary rules as may best tend to protect, preserve and increase the value and attractiveness of the park. (1921, c. 222, s. 2; C.S., s. 6942(a); 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 25.)

§ 100-14. Use of fees and other collections.

All fees and other money collected and received by the Department of Environment, Health, and Natural Resources in connection with its proper administration of the North Carolina State Parks System shall be used by said Department for the administration, protection, improvement, and maintenance of the State Parks System. (1921, c. 22, s. 3; C.S., s. 6942(b); 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 26.)

§ 100-15. Annual reports.

The Department shall make an annual report to the Governor of all money received and expended by it in the administration of the North Carolina State Parks System, and of such other items as may be called for by him or by the General Assembly. (1921, c. 222, s. 4; C.S., s. 6942(c); 1925, c. 122, s. 23; 1973, c. 1262, s. 28; 1977, c. 771, s. 4; 1989, c. 727, s. 27.)

Chapter 102.

Official Survey Base.

Sec.

102-4. Damaging, defacing, or destroying monuments.

§ 102-4. Damaging, defacing, or destroying monuments.

If any person shall willfully damage, deface, destroy, or otherwise injure a station, monument or permanent mark of the North Carolina Coordinate System, or shall oppose any obstacles to the proper, reasonable, and legal use of any such station or monument, such person shall be guilty of a Class 1 misdemeanor. (1939, c. 163, s. 4; 1993, c. 539, s. 683; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 683, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses

occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 104.

United States Lands.

ARTICLE 1.

Authority for Acquisition.

§ 104-5. Forest reserve in North Carolina authorized; powers conferred.

CASE NOTES

Concurrent Jurisdiction. — This section and 16 U.S.C. § 551 grant the United States concurrent jurisdiction over national forest lands located within North Carolina. *United States v. Raffield*, 82 F.3d 611 (4th Cir. 1996).

Where defendant was pulled over inside Pisgah National Forest, North Carolina, United States had jurisdiction to

prosecute defendant for driving under the influence of intoxicating beverage and refusing to submit to a chemical breath analysis under Assimilative Crimes Act; state crimes become federal offenses when committed on federal lands within the state. *United States v. Raffield*, 82 F.3d 611 (4th Cir. 1996).

§ 104-7. Acquisition of lands for public buildings; cession of jurisdiction; exemption from taxation.

CASE NOTES

Jurisdiction Is a Federal Question. — Whether the United States has acquired jurisdiction over land it owns is a federal question. *State v. Smith*, 328 N.C. 161, 400 S.E.2d 405, cert. denied, 502 U.S. 956, 112 S. Ct. 414, 116 L. Ed. 2d 435 (1991).

Federal Acquisition of Jurisdiction Over Territory. — The federal government must acquire state land by condemnation or otherwise. If the state in which the land is situated cedes jurisdiction to the federal government, and if the government accepts jurisdiction, the state no longer has jurisdiction over this territory. *State v. Smith*, 328 N.C. 161, 400 S.E.2d 405, cert. denied, 502 U.S.

956, 112 S. Ct. 414, 116 L. Ed. 2d 435 (1991).

Jurisdiction on Camp Lejeune Reservation. — It appears that the State ceded all jurisdiction on the Camp Lejeune reservation that it could, except for the service of process. *State v. Smith*, 328 N.C. 161, 400 S.E.2d 405, cert. denied, 502 U.S. 956, 112 S. Ct. 414, 116 L. Ed. 2d 435 (1991).

North Carolina lacked jurisdiction to try a person as an adult for murders he allegedly committed as a juvenile on the Camp Lejeune military reservation. *State v. Smith*, 328 N.C. 161, 400 S.E.2d 405, cert. denied, 502 U.S. 956, 112 S. Ct. 414, 116 L. Ed. 2d 435 (1991).

Chapter 104A.

Degrees of Kinship.

§ 104A-1. Degrees of kinship; how computed.

Cross References. — As to meaning of "next of kin," see § 41-6.1.

Editor's Note. — The case of *In re Will of Cobb*, 271 N.C. 307, 156 S.E.2d

285 (1967), cited under this section in the main volume, has been abrogated by statute. See § 41-6.1.

Chapter 104D.

Southern States Energy Compact.

Sec.

104D-2. (For applicability see note) Appointment of North Carolina members and alternate

members of Southern States Energy Board.

§ 104D-2. (For applicability see note) Appointment of North Carolina members and alternate members of Southern States Energy Board.

(a) North Carolina members of the Southern States Energy Board shall be appointed as follows:

- (1) One member to be appointed by the Governor.
- (2) One member of the House of Representatives to be appointed by the Speaker of the House of Representatives.
- (3) One member of the Senate to be appointed by the President Pro Tempore of the Senate.

(b) Members shall serve at the pleasure of the original appointing authority and until their successors are appointed.

(c) Each appointing authority is authorized to appoint an alternate member who may serve at and for such time as the regular member shall designate and shall have the same power and authority as the regular member when so serving. (1965, c. 858, s. 2; 1983, c. 282, s. 2; 1991, c. 739, s. 9.)

Editor's Note. — Session Laws 1991, c. 739, which amended this section by inserting "Pro Tempore" in subdivision (a)(3), in s. 34 provided: "This act applies to any appointments for terms beginning

on or after January 1, 1993, and also applies to the filling of any unexpired terms where the term began before that date but the vacancy occurs on or after that date".

Chapter 104E.

North Carolina Radiation Protection Act.

Sec.

104E-5. Definitions.

104E-9. Powers and functions of Department of Environment,

Health, and Natural Resources.

§ 104E-5. Definitions.

Unless a different meaning is required by the context, the following terms as used in this Chapter shall have the meanings hereinafter respectively ascribed to them:

- (1) "Agreement materials" means those materials licensed by the State under agreement with the United States Nuclear Regulatory Commission and which include by-product, source or special nuclear materials in a quantity not sufficient to form a critical mass, as defined by the Atomic Energy Act of 1954 as amended.
- (2) "Agreement state" means any state which has consummated an agreement with the United States Nuclear Regulatory Commission under the authority of section 274 of the Atomic Energy Act of 1954 as amended, as authorized by that state of licensing authority for agreement materials and the discontinuance of such licensing activities by the United States Nuclear Regulatory Commission.
- (3) "Atomic energy" means all forms of energy released in the course of nuclear fission or nuclear fusion or other atomic transformations.
- (4) "By-product material" means any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.
- (5) "Commission" means the Radiation Protection Commission.
- (6) "Department" means the State Department of Environment, Health, and Natural Resources.
- (7) "Emergency" means any condition existing outside the bounds of nuclear operating sites owned or licensed by a federal agency, and further any condition existing within or outside of the jurisdictional confines of a facility licensed by the Department and arising from the presence of by-product material, source material, special nuclear materials, or other radioactive materials, which is endangering or could reasonably be expected to endanger the health and safety of the public, or to contaminate the environment.
- (7a) "Engineered barrier" means a man-made structure or device that is intended to improve a disposal facility's ability to meet (i) the performance objectives of Subpart C, Title 10, Code of Federal Regulations Part 61 in effect on 1 January 1987, (ii) other requirements set out in G.S. 104E-25, and (iii) requirements of rules adopted by the Commission under this Chapter.
- (8) "General license" means a license effective pursuant to regulations promulgated under the provisions of this Chap-

ter without the filing of an application to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

- (9) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, protons, neutrons, and other nuclear particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.
- (9a) "Low-level radioactive waste" means low-level radioactive waste as defined in the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99-240, 99 Stat. 1842, 42 U.S.C. 2021b et seq. and other waste, including waste containing naturally occurring and accelerator produced radioactive material, which is not regulated by the United States Nuclear Regulatory Commission or other agency of the federal government and which is determined to be low-level radioactive waste by the North Carolina Radiation Protection Commission.
- (9b) "Low-level radioactive waste facility" means a facility for the storage, collection, processing, treatment, recycling, recovery, or disposal of low-level radioactive waste.
- (9c) "Low-level radioactive waste disposal facility" means any low-level radioactive waste facility or any portion of such facility, including land, buildings, and equipment, which is used or intended to be used for the disposal of low-level radioactive waste on or in land in accordance with rules promulgated under this Chapter.
- (10) "Nonionizing radiation" means radiation in any portion of the electromagnetic spectrum not defined as ionizing radiation, including, but not limited to, such sources as laser, maser or microwave devices.
- (11) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this State, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Nuclear Regulatory Commission, or any successor thereto, and other than federal government agencies licensed by the United States Nuclear Regulatory Commission, or any successor thereto.
- (12) "Radiation" means gamma rays and x-rays, alpha and beta particles, high speed electrons, protons, neutrons, and other nuclear particles, and electromagnetic radiation consisting of associated and interacting electric and magnetic waves including those with frequencies between three times 10 to the eighth power cycles per second and three times 10 to the twenty-fourth power cycles per second and wavelengths between one times 10 to the minus fourteenth power centimeters and 100 centimeters.
- (13) "Radiation machine" means any device designed to produce or which produces radiation or nuclear particles when the associated control devices of the machine are operated.
- (14) "Radioactive material" means any solid, liquid, or gas which emits ionizing radiation spontaneously.
- (14a) "Shallow land burial" means disposal of low-level radioactive waste in subsurface trenches without the additional confinement of the waste as described in G.S. 104E-25.

(14b) "Secretary" means the Secretary of Environment, Health, and Natural Resources.

(15) "Source material" means (i) uranium, thorium, or any other material which the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto has determined the material to be such; or (ii) ores containing one or more of the foregoing materials, in such concentration as the Department declares to be source material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material in such concentration to be source material.

(16) "Special nuclear material" means (i) plutonium, uranium 233, uranium 235, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Department declares to be special nuclear material after the United States Nuclear Regulatory Commission, or any successor thereto, has determined the material to be such, but does not include source material; or (ii) any material artificially enriched by any of the foregoing, but does not include source material.

(17) "Specific license" means a license, issued after application, to use, manufacture, produce, transfer, receive, acquire, own or process quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially. Nothing in this Chapter shall require the licensing of individual natural persons involved in the use of radiation machines or radioactive materials for medical diagnosis or treatment.

(18) Repealed by Session Laws 1987, c. 850, s. 3. (1975, c. 718, s. 1; 1981, c. 704, s. 8; 1987, c. 633, ss. 1-4; c. 850, s. 3; 1989, c. 727, s. 219(16); 1993, c. 501, s. 2.1; 1995, c. 504, s. 4.)

Effect of Amendments. — The 1995 amendment, effective July 28, 1995, deleted "the Department of" following "the Secretary of" in subdivision (14b).

§ 104E-9. Powers and functions of Department of Environment, Health, and Natural Resources.

(a) The Department of Environment, Health, and Natural Resources is authorized:

(1) To advise, consult and cooperate with other public agencies and with affected groups and industries.

(2) To encourage, participate in, or conduct studies, investigations, public hearings, training, research, and demonstrations relating to the control of sources of radiation, the measurement of radiation, the effect upon public health and safety of exposure to radiation and related problems.

(3) To require the submission of plans, specifications, and reports for new construction and material alterations on (i) the design and protective shielding of installations for radioactive material and radiation machines and (ii) systems for the disposal of radioactive waste materials, for the determination of any radiation hazard and may render

opinions, approve or disapprove such plans and specifications.

- (4) To collect and disseminate information relating to the sources of radiation, including but not limited to: (i) maintenance of a record of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations; and (ii) maintenance of a record of registrants and licensees possessing sources of radiation requiring registration or licensure under the provisions of this Chapter, and regulations hereunder, and any administrative or judicial action pertaining thereto; and to develop and implement a responsible data management program for the purpose of collecting and analyzing statistical information necessary to protect the public health and safety. The Department may refuse to make public dissemination of information relating to the source of radiation within this State after the Department first determines that the disclosure of such information will contravene the stated policy and purposes of this Chapter and such disclosure would be against the health, welfare and safety of the public.
- (5) To respond to any emergency which involves possible or actual release of radioactive material; and to perform or supervise decontamination and otherwise protect the public health and safety in any manner deemed necessary. This section does not in any way alter or change the provisions of Chapter 166 of the North Carolina General Statutes concerning response during an emergency by the Department of Military and Veterans Affairs or its successor.
- (6) To develop and maintain a statewide environmental radiation program for monitoring the radioactivity levels in air, water, soil, vegetation, animal life, milk, and food as necessary to ensure protection of the public and the environment from radiation hazards.
- (7) To implement the provisions of this Chapter and the regulations duly promulgated under the Chapter.
- (8) To establish annual fees for activities under this Chapter based on actual administrative costs to be applied to training, enforcement, and inspection pursuant to the provisions of this Chapter and to charge and collect fees from operators and users of low-level radioactive waste facilities pursuant to the provisions of this Chapter.
- (9) To enter upon any lands and structures upon lands to make surveys, borings, soundings, and examinations as may be necessary to determine the suitability of a site for a low-level radioactive waste facility or low-level radioactive disposal facility. The Department shall give 30 days' notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking; provided, however, that the Department shall make reimbursement for any damage to such land or structures caused by such activities. This authority shall also apply to the North Carolina Low-Level Radioactive Waste Management Authority.
- (10) To encourage research and development and disseminate information on state-of-the-art means of handling and disposing of low-level radioactive waste.

(11) To promote public education and public involvement in the decision-making process for the siting and permitting of proposed low-level radioactive waste facilities. The Department shall assist localities in which facilities are proposed in collecting and receiving information relating to the suitability of the proposed site. At the request of a local government in which facilities are proposed, the Department shall direct the appropriate agencies of State government to develop such relevant data as that locality shall reasonably request.

(b) The Radiation Protection Division of the Department of Environment, Health, and Natural Resources shall develop a training program for tanning equipment operators that meets the training rules adopted by the North Carolina Radiation Protection Commission. If the training program is provided by the Department, the Department may charge each person trained a reasonable fee to recover the actual cost of the training program. (1975, c. 718, s. 1; 1979, c. 694, s. 4; 1981, c. 704, s. 10.1; 1987, c. 633, s. 7; 1987 (Reg. Sess., 1988), c. 993, s. 25; 1989, c. 727, s. 219(19); 1991, c. 735, s. 2; 1993, c. 501, s. 4; 1995, c. 509, s. 49.)

Effect of Amendments. — The 1995 amendment, effective July 29, 1995, substituted periods for semicolons at the end

of subdivisions (a)(1), (a)(2), and (a)(3); and substituted "To" for "The Department shall" in subdivision (a)(11).

§ 104E-23. Penalties; injunctive relief.

Editor's Note. — Session Laws 1993, c. 539, s. 685, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses

occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 104E-29. Confidential information protected.

Editor's Note. — Session Laws 1993, c. 539, s. 686, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses

occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Chapter 104F.

Southeast Interstate Low-Level Radioactive Waste Management Compact.

Sec.	Sec.
104F-2.1. Restrictions on importing waste from outside the compact.	104F-3. Violation a misdemeanor.
	104F-4. Advisory Committee.

§ 104F-1. Compact entered into; form of Compact.

CASE NOTES

Cited in *Richmond County v. North Carolina Low-Level Radioactive Waste Mgt. Auth.*, 335 N.C. 77, 436 S.E.2d 113 (1993).

§ 104F-2.1. Restrictions on importing waste from outside the compact.

The North Carolina members of the Southeast Interstate Low-Level Radioactive Waste Management Commission appointed under G.S. 104F-2 shall not vote in favor of importing waste into the North Carolina regional facility from any person, state, or similar regional body or group of states, or foreign country, outside the compact under G.S. 104F-1, Article IV(e) without prior approval from the North Carolina General Assembly. (1993, c. 501, s. 5.1.)

Editor's Note. — Session Laws 1993, c. 501, s. 31 made this section effective upon ratification. The act was ratified July 23, 1993.

§ 104F-3. Violation a misdemeanor.

Violation of the provisions of this compact by any person not an official of another state is a Class 1 misdemeanor. (1983, c. 714, s. 2; 1993, c. 539, s. 687; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note. — Session Laws 1993, c. 539, s. 687, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 104F-4. Advisory Committee.

(a) The Advisory Committee to the North Carolina Members of the Low-Level Radioactive Waste Management Compact Commission is hereby created. It shall consist of seven voting members, two to be appointed by the Governor, who shall be members of the Radiation Protection Commission, two by the President Pro Tempore of the Senate, and two by the Speaker of the House of Representatives. The Director of the Division of Radiation Protection of the Department of Environment, Health, and Natural Resources shall be an ex officio member. The members shall serve

for two-year terms. A vacancy in membership shall be filled by the appointing authority who made the initial appointment. A member whose term expires may be reappointed.

(b) It shall be the duty of the Committee to consult with and advise the State's representatives to the Compact Commission concerning technical and policy matters.

(c) The Governor shall appoint the Committee chairman and he may be reappointed. The Committee shall meet at such times and places as the chairman shall designate. The facilities of the State Legislative Building and the Legislative Office Building shall be available to the Committee, subject to approval of the Legislative Services Commission. Legislative members of the Committee shall be reimbursed for subsistence and travel expenses at the rates set out in G.S. 120-3.1. Members of the Committee who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the Committee who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set out in G.S. 138-6.

(d) Subject to the approval of the Legislative Services Commission, the staff resources of the Legislative Services Commission shall be available to the Committee without cost except for travel, subsistence, supplies, and materials. The Committee may solicit, employ, or contract for technical assistance and clerical assistance and may purchase or contract for the materials and services it needs. (1983, c. 714, § 3; 1989, c. 727, s. 219(25); 1995, c. 490, s. 31; c. 504, s. 5.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of the date the term began."

Effect of Amendments. — Session Laws 1995, c. 490, s. 31 added "Pro Tempore" in the second sentence of the

first paragraph. For the applicability of this amendment, see editor's note.

Session Laws 1995, c. 504, s. 5, effective July 28, 1995, added the subsection (a) through (d) designations; and in the third sentence of subsection (a) substituted "Director" for "Chief of the Radiation Protection Section", and "Radiation Protection" for "Facility Services".

Chapter 104G.

North Carolina Low-Level Radioactive Waste Management Authority Act of 1987.

Sec.

104G-5. Organization and administration.

§ 104G-5. Organization and administration.

(a) Creation. — The North Carolina Low-Level Radioactive Waste Management Authority is hereby created as follows:

- (1) The Authority shall be located within the Department of Administration. The Authority shall exercise all of its powers independently of the Secretary of Administration and, notwithstanding any other provision of law, shall be subject to the direction and supervision of the Secretary of Administration only with respect to the management functions of coordinating and reporting.
- (2) The Authority shall continue until its existence shall be terminated by law. Upon the termination of the existence of the Authority, all of its rights and properties shall pass to and be vested in the State.
- (3) The Department of Administration shall provide such technical and clerical services and personnel as the Authority may require in the performance of its functions and shall provide liaison services with other agencies of State government to disseminate information and comment on Authority matters. The Authority shall reimburse the Department for such services from its revenues or from other funding sources.
- (4) To the extent necessary and appropriate, the Authority shall reimburse any participating State agency or unit of local government which advances funds to pay for the expenditures required for preliminary costs in the creation of the Authority or for its subsequent operation. Such funds shall be reimbursed to the advancing party from low-level radioactive waste disposal facility revenues.

(b) Membership. — The Authority shall be governed by a board composed of 15 members. Members of the General Assembly, the Board, the Commission, and of any State board or commission which exercises regulatory authority with respect to any activity of the Authority shall be ineligible for appointment to membership on the Authority.

(c) Appointment. — Appointments to the Authority shall be made as follows:

- (1) The General Assembly shall appoint 10 members in accordance with G.S. 120-121, five upon recommendation of the Speaker of the House of Representatives and five upon recommendation of the President Pro Tempore of the Senate. Successors shall be made upon the recommendation of the officer who recommended the original appointment.
- (2) The Governor shall appoint five members.
- (3) Vacancies in appointments shall be filled for the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

- (4) Members of the Authority shall include persons with technical and legal expertise in low-level radioactive waste management and shall represent, insofar as practicable, the diverse interests of the State and, initially, each geographic region of the State.
- (5) Initial appointments shall be made on or before 1 October 1987. Initial appointments to be made by the General Assembly shall be made as though vacancies had occurred in unexpired terms and in accordance with G.S. 120-122.
- (6) The Authority shall begin operation upon the appointment of all of its members, provided that the Authority shall begin operation by 1 November 1987, notwithstanding the failure of any of the appointing authorities to make appointments.

(d) Terms.

- (1) Of the initial appointments made by the General Assembly, two terms shall expire 30 June 1990, four terms shall expire 30 June 1991, two terms shall expire 30 June 1992, and two terms shall expire 30 June 1993. Successors shall serve for four-year terms. The General Assembly shall have the power to remove, in accordance with G.S. 143B-13, any member appointed by it.
- (2) Of the initial appointments by the Governor, two terms shall expire 30 June 1990, one term shall expire 30 June 1991, one term shall expire 30 June 1992, and one term shall expire 30 June 1993. Successors shall serve for four-year terms. The Governor shall have the power to remove, in accordance with G.S. 143B-13, any member appointed by him.

(e) Officers. — The Governor shall appoint from the members of the Authority the Chairman and Vice-Chairman of the Authority. In the event that the Chairman and Vice-Chairman are not appointed by 1 November 1987, the Authority shall elect a Chairman and Vice-Chairman and begin operation. The Executive Director of the Authority shall serve as secretary of the Authority.

(f) Meetings. — The Authority shall meet at least quarterly or more frequently at such regular meeting time and at any place within the State as the Authority may provide. The Authority shall meet upon the call of its Chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business. Members of the Authority who are State employees shall be reimbursed for their expenses in accordance with G.S. 138-6. Members of the Authority who are not State employees shall be reimbursed for their expenses in accordance with G.S. 138-5 except that the per diem rate as defined in G.S. 138-5(a)(1) shall be one hundred fifty dollars (\$150.00) per day of service.

(g) Executive Director and Staff. — The Authority shall be assisted by an Executive Director and staff who shall be subject to provisions of law applicable to State employees generally, including Chapters 126 and 135 of the General Statutes, except as such provisions are modified by this Chapter.

- (1) The Authority shall appoint an Executive Director, who shall report to the Authority and serve at its pleasure. The Executive Director shall be the chief administrative officer of the Authority. The Authority shall set, subject to consultation with the Advisory Budget Commission, and pay the compensation of the Executive Director.

- (2) The Executive Director shall be assisted by such senior professional staff members as may be necessary to carry out the provisions of this Chapter, who shall be appointed by the Authority on nomination of the Executive Director. The Authority shall set, subject to consultation with the Advisory Budget Commission, and pay the compensation of the staff members it appoints.
- (3) In addition, the Executive Director shall be assisted by such other employees as may be needed to carry out the provisions of this Chapter. The staff complement shall be established by the Authority on recommendation of the Executive Director. Such other employees shall be appointed by the Authority upon the recommendation of the Executive Director and shall be compensated by the Authority pursuant to the provisions of Chapter 126 of the General Statutes. (1987, c. 850, s. 1; 1987 (Reg. Sess., 1988), c. 993, s. 2; 1995, c. 490, s. 32.)

Editor's Note. — Session Laws 1995, c. 490, which amended this section, in s. 65 provides: "This act applies with respect to terms beginning on or after January 1, 1997, and to vacancies occurring on or after that date regardless of

the date the term began."

Effect of Amendments. — The 1995 amendment added "Pro Tempore" in the first sentence of subdivision (c)(1). For the applicability of this amendment, see editor's note.

Chapter 105.

Taxation.

SUBCHAPTER I. LEVY OF TAXES.

Article 1.

Schedule A. Inheritance Tax.

Sec.

105-2. General provisions.

105-3. Property exempt.

105-4. Rate of tax — Class A.

105-9. Deductions.

105-23.1. Making installment payments of tax due when federal estate tax is payable in installments.

Article 2.

Schedule B. License Taxes.

105-33. Taxes under this Article.

105-36 through 105-37. [Repealed effective July 1, 1997].

105-38. Amusements — Circuses, menageries, wild west, dog and/or pony shows, etc.

105-42. [Repealed effective July 1, 1997.]

105-45, 105-46. [Repealed effective July 1, 1997.]

105-50. [Repealed effective July 1, 1997.]

105-51.1. [Repealed effective July 1, 1997.]

105-53. (Repealed effective July 1, 1997) Peddlers, itinerant merchants, and specialty market operators.

105-54, 105-55. [Repealed effective July 1, 1997.]

105-58. [Repealed effective July 1, 1997.]

105-60, 105-61. [Repealed effective July 1, 1997.]

105-62. [Repealed effective July 1, 1997.]

105-65, 105-65.1. [Repealed effective July 1, 1997.]

105-66.1. [Repealed effective July 1, 1997.]

105-70. [Repealed effective July 1, 1997.]

105-72. [Repealed effective July 1, 1997.]

105-74. [Repealed effective July 1, 1997.]

105-75.1. [Repealed effective July 1, 1997.]

105-77. [Repealed effective July 1, 1997.]

Sec.

105-80. [Repealed effective July 1, 1997.]

105-85, 105-86. [Repealed effective July 1, 1997.]

105-89 through 105-90. [Repealed effective July 1, 1997.]

105-91. [Repealed effective July 1, 1997.]

105-97 through 105-99. [Repealed effective July 1, 1997.]

105-102.1. [Repealed effective July 1, 1997.]

105-102.5. [Repealed effective July 1, 1997.]

Division I. Administrative Provisions of Schedule B.

105-109.1. (Effective July 1, 1997) Interest.

Article 2B.

Schedule B-B. Soft Drink Tax.

105-113.41. [Repealed effective July 1, 1999.]

105-113.42. [Repealed effective July 1, 1999.]

105-113.44. [Repealed effective July 1, 1999.]

105-113.45. (Effective until July 1, 1997) Excise taxes on soft drinks and base products.

105-113.45. (Effective July 1, 1997 — see editor's note for repeal date) Excise taxes on soft drinks and base products.

105-113.46. (Repealed effective July 1, 1999) Exemptions.

105-113.47. (Repealed effective July 1, 1999) Registration of certain exempt bottled soft drinks and juice concentrates.

105-113.50 through 105-113.53. [Repealed effective July 1, 1999.]

105-113.57, 105-113.58. [Repealed effective July 1, 1999.]

105-113.63, 105-113.64. [Repealed effective July 1, 1999.]

Article 3.

Schedule C. Franchise Tax.

105-117, 115-118. [Repealed.]

105-122. Franchise or privilege tax on

Sec.

domestic and foreign corporations.

Article 3A.

Tax Incentives for New and Expanding Businesses

[Repealed effective January 1, 2002].

- 105-129.2. (Repealed effective January 1, 2002 — see note) Definitions.
- 105-129.3. (Repealed effective January 1, 2002) Enterprise tier designation.
- 105-129.4. (Repealed effective January 1, 2002) Eligibility; forfeiture.
- 105-129.5. (Repealed effective January 1, 2002) Tax election; cap.
- 105-129.6. (Repealed effective January 1, 2002) Application; reports.
- 105-129.7. (Repealed effective January 1, 2002) Substantiation.
- 105-129.8. (Repealed effective January 1, 2002) Credit for creating jobs.
- 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.
- 105-129.10. (Repealed effective January 1, 2002) Credit for research and development.
- 105-129.11. (Repealed effective January 1, 2002) Credit for worker training.
- 105-129.12 through 105-129.14. [Reserved.]

Article 3B.

Business Tax Credit

[Repealed effective January 1, 2002].

- 105-129.15. (Repealed effective January 1, 2002) Definitions.
- 105-129.16. (Repealed effective January 1, 2002) Credit for investing in business property.
- 105-129.17. (Repealed effective January 1, 2002) Tax election; cap.
- 105-129.18. (Repealed effective January 1, 2002) Substantiation.
- 105-129.19. (Repealed effective January 1, 2002) Reports.
- 105-129.20 through 105-129.24. [Reserved.]

Article 4.

Schedule D. Income Tax.

Division I. Corporation Income Tax.

Sec.

- 105-130.3. Corporations.
- 105-130.4. Allocation and apportionment of income for corporations.
- 105-130.5. Adjustments to federal taxable income in determining State net income.
- 105-130.7. Deductible portion of dividends.
- 105-130.38. [Repealed.]
- 105-130.40. [Recodified.]
- 105-130.41. Credit for North Carolina State Ports Authority wharfage, handling, and throughput charges.

Division II. Individual Income Tax.

- 105-134.1. Definitions.
- 105-134.6. Adjustments to taxable income.
- 105-151.15. [Repealed.]
- 105-151.17. [Recodified.]
- 105-151.19. [Repealed.]
- 105-151.20. (Repealed effective January 1, 2003) Credit or partial refund for tax paid on certain federal retirement benefits.
- 105-151.22. Credit for North Carolina State Ports Authority wharfage, handling, and throughput charges.
- 105-151.26. Credit for charitable contributions by nonitemizers.

Division V. Tax Credits for Qualified Business Investments.

- 105-163.010. (Repealed effective for investments made on or after January 1, 1999) Definitions.
- 105-163.011. (Repealed effective for investments made on or after January 1, 1999) Tax credits allowed.
- 105-163.012. (Repealed effective for investments made on or after January 1, 1999) Limit; carry-over; ceiling; reduction in basis.
- 105-163.013. (Repealed effective for investments made on or after January 1, 1999) Registration.
- 105-163.014. (Repealed effective for in-

Sec. vestments made on or after January 1, 1999) Forfeiture of credit.

Article 5.

Schedule E. Sales and Use Tax.

Division I. Title, Purpose and Definitions.

105-164.3. Definitions.

Division II. Taxes Levied.

Part 1. Retail Sales Tax.

105-164.4. Tax imposed on retailers.

Part 3. Use Tax.

105-164.6A. Voluntary collection of use tax by sellers.

Part 4. General Provisions.

105-164.12B. Bundled transactions.

Division III. Exemptions and Exclusions.

105-164.13. Retail sales and use tax.

105-164.14. Certain refunds authorized.

Article 6.

Schedule G. Gift Taxes.

105-188. Gift taxes; classification of beneficiaries; exemptions; rates of tax.

105-191. [Repealed.]

105-196. [Repealed.]

105-197. When return required; due date of tax and return.

Article 8B.

Schedule I-B. Taxes upon Insurance Companies.

105-228.5. Taxes measured by gross premiums.

105-228.9. Commissioner of Insurance to administer portions of Article.

Article 9.

Schedule J. General Administration; Penalties and Remedies.

105-228.90. Scope and definitions.

105-229. [Repealed.]

105-236. Penalties.

105-241.1. Additional taxes; assessment procedure.

Sec. 105-253. Personal liability of officers, trustees, or receivers.

105-267. Taxes to be paid; suits for recovery of taxes.

SUBCHAPTER II. LISTING, APPRAISAL, AND ASSESSMENT OF PROPERTY AND COLLECTION OF TAXES ON PROPERTY.

Article 12.

Property Subject to Taxation.

105-275. Property classified and excluded from the tax base.

105-275.1. Reimbursement for exclusion of manufacturers' inventories and poultry and livestock.

105-277A. Reimbursement for exclusion of retailers' and wholesalers' inventories.

105-277.1. (Effective July 1, 1997) Property classified for taxation at reduced valuation.

105-277.1A. (Effective July 1, 1997) Property classified for taxation at reduced valuation; duties of tax collectors; reimbursement of localities for portion of tax lost.

105-277.2. Agricultural, horticultural, and forestland — Definitions.

105-278.7. Real and personal property used for educational, scientific, literary, or charitable purposes.

105-282.1. Applications for property tax exemption or exclusion.

Article 17.

Administration of Listing.

105-309. What the abstract shall contain.

Article 22A.

Motor Vehicles.

105-330.2. Appraisal, ownership, and situs.

Article 23.

Public Service Companies.

105-333. Definitions.

SUBCHAPTER V. MOTOR FUEL TAXES.

Article 36B.

Tax on Carriers Using Fuel Purchased Outside State.

Sec.
105-449.57. Cooperative agreements between jurisdictions.

Article 36C.

Gasoline, Diesel, and Blends.

Part 1. General Provisions.

105-449.60. Definitions.

Part 2. Licensing.

- 105-449.65. List of persons who must have a license.
- 105-449.66. Types of importers; restrictions on who can get a license as an importer.
- 105-449.67. List of persons who may obtain a license.
- 105-449.69. How to apply for a license.
- 105-449.70. Supplier election to collect tax on out-of-state removals.
- 105-449.71. Permissive supplier election to collect tax on out-of-state removals.
- 105-449.72. Bond or letter of credit required as a condition of obtaining and keeping certain licenses.
- 105-449.73. Reasons why the Secretary can deny an application for a license.
- 105-449.77. Records and lists of license applicants and license holders.

Part 3. Tax and Liability.

- 105-449.81. Excise tax on motor fuel.
- 105-449.82. Liability for tax on removals from a refinery or terminal.
- 105-449.83A. Liability for tax on fuel grade ethanol.
- 105-449.84A. Liability for tax on behind-the-rack transfers.
- 105-449.85. Compensating tax on and liability for unaccounted for motor fuel losses at a terminal.
- 105-449.87. Backup tax and liability for the tax.
- 105-449.88. (Effective until July 1, 1997) Exemptions from the excise tax.

- Sec.
105-449.88. (Effective July 1, 1997) Exemptions from the excise tax.
- 105-449.89. Removals by out-of-state bulk-end user.

Part 4. Payment and Reporting.

- 105-449.90. When tax return and payment are due.
- 105-449.90A. Payment by supplier of destination state tax collected on exported motor fuel.
- 105-449.91. Remittance of tax to supplier.
- 105-449.92. Notice to suppliers of cancellation or reissuance of certain licenses; effect of notice.
- 105-449.93. Exempt sale deduction and percentage discount for licensed distributors and some licensed importers.
- 105-449.94. Quarterly reconciling return for exempt sales by licensed distributor and some licensed importers.
- 105-449.95. Quarterly hold harmless for licensed distributors and some licensed importers.
- 105-449.96. Information required on return filed by supplier.
- 105-449.97. Deductions and discounts allowed a supplier when filing a return.
- 105-449.98. Duties of supplier concerning payments by distributors, exporters, and importers.
- 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.
- 105-449.101. Motor fuel transporter to file informational return showing deliveries of imported or exported motor fuel.
- 105-449.102. Distributor to file return showing exports from a bulk plant.
- 105-449.104. Use of name and account number on return.

Part 5. Refunds.

- 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, fuel unsalable for highway use, and undyed diesel fuel used in boats.

Part 6. Enforcement and
Administration.

Sec.

105-449.115. Shipping document required to transport motor fuel by railroad tank car or transport truck.

105-449.118A. Civil penalty for refusing to allow the taking of a motor fuel sample.

105-449.120. Acts that are misdemeanors.

105-449.121. Record-keeping requirements; inspection authority.

Article 36D.

Alternative Fuel.

105-449.130. Definitions.

105-449.131. List of persons who must have a license.

105-449.134. Denial or cancellation of license.

105-449.136. Tax on alternative fuel.

Sec.

105-449.138. Requirements for bulk-end users and retailers.

105-449.139. Miscellaneous provisions.

**SUBCHAPTER VIII. LOCAL
GOVERNMENT SALES
AND USE TAX.**

Article 39.

**Local Government Sales and Use
Tax.**

105-465. County election as to adoption of local sales and use tax.

105-467. Scope of sales tax.

105-468. Scope of use tax.

105-469. Secretary to collect and administer local sales and use tax.

Article 42.

**Additional Supplemental Local
Government Sales and
Use Taxes.**

105-503. [Recodified.]

SUBCHAPTER I. LEVY OF TAXES.

ARTICLE 1.

Schedule A. Inheritance Tax.

§ 105-2. General provisions.

(a) A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, in the following cases:

(1) When the transfer is from a person who dies seized of the property while a resident of the State and it is made:

a. By will or by intestacy;

b. Pursuant to a final judgment entered in a proceeding to caveat a will; or

c. Pursuant to a settlement agreement, to which the personal representative is a party, that, in the determination of the Secretary of Revenue in his sole discretion based on evidence presented by the personal representative, reflects the good faith, arm's-length compromise of an actual dispute between beneficiaries, heirs, or personal representatives and does not have the primary purpose of avoiding inheritance tax.

(2) When the transfer is by will or intestate laws of this or any other state of real property or goods, wares, and merchandise within this State, or of any property, real, personal, or mixed, tangible or intangible, over which the State of North Carolina has a taxing jurisdiction, including State and municipal bonds, and the decedent was a resident of the

State at the time of death; when the transfer is of real property or tangible personal property within the State, or intangible personal property that has acquired a situs in this State, and the decedent was a nonresident of the State at the time of death.

- (3) When the transfer of property made by a resident, or nonresident, is of real property within this State, or of goods, wares and merchandise within this State, or of any other property, real, personal, or mixed, tangible or intangible, over which the State of North Carolina has taxing jurisdiction, including State and municipal bonds, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death, including a transfer under which the transferor has retained for his life or any period not ending before his death (i) the possession or enjoyment of, or the income from, the property or (ii) the right to designate the persons who shall possess or enjoy the property or the income therefrom. The aggregate value exceeding ten thousand dollars (\$10,000) of transfers to any one donee within a tax year by deed, grant, bargain, sale, gift, or combination thereof, made within three years prior to the death of the grantor, vendor, or donor, without an adequate valuable consideration, shall be presumed, subject to rebuttal, to have been made in contemplation of death within the meaning of this section; the first ten thousand dollars (\$10,000) in value shall be deemed not made in contemplation of death.
- (4) When any person or corporation comes into possession or enjoyment, by a transfer from a resident, or from a nonresident decedent when such nonresident decedent's property consists of real property within this State or tangible personal property within the State, or intangible personal property that has acquired a situs in this State, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by any instrument taking effect after March 24, 1939.
- (5)a. For purposes of this Article, the term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that:
 1. A power to consume, invade or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support or maintenance of the decedent shall not be deemed a general power of appointment.
 2. A power of appointment which is exercisable by the decedent only in conjunction with another person:
 - I. If the power is not exercisable by the decedent except in conjunction with the creator of the power, such power shall not be deemed a general power of appointment.
 - II. If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to

the power, which is adverse to exercise of the power in favor of the decedent, such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

III. If (after the application of clauses I and II) the power is a general power of appointment and is exercisable in favor of such other person, such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.

IV. For purposes of clauses II and III, a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

b. Whenever any person shall have a general power of appointment with respect to any interest in property, such person shall, for the purposes of this Article, be deemed the owner of such interest and accordingly:

1. If in connection with any transfer of property taxable under this Article the transferor shall give to any person a general power of appointment with respect to any interest in such property, the transferor shall be deemed to have given such interest in such property to such person.

2. If any person holding a general power of appointment with respect to any interest in property shall exercise such power in favor of any other person or persons, either by will or by an appointment made in contemplation of the death of such person, or by an appointment intended to take effect in possession or enjoyment at or after such death, he shall be deemed to have made a transfer of such interest to such person or persons.

3. If any person holding a general power of appointment with respect to any interest in property shall relinquish such power by any action taken in contemplation of death or intended to take effect at or after his death, or shall die without fully exercising such power, he shall be deemed, to the extent of such relinquishment or nonexercise, to have made a transfer of such interest to the person or persons who shall benefit thereby.

(6) Neither the exercise nor the relinquishment of a special power of appointment (which shall mean any power other

than a general power) with respect to an interest in property shall be deemed to constitute a transfer of such interest within the meaning of this Article. If in connection with any transfer taxable under this Article the transferor shall give to any person a special power of appointment with respect to any interest in property, he shall be deemed, for the purpose of computing the tax applicable thereto, to have given such interest in equal shares to those persons, not more than two, among the possible appointees and takers in default of appointment whom the transferor's executor or administrator may designate as transferees in the inheritance tax return, except that:

- a. If a gift tax return is filed with respect to such transfer, the persons designated therein shall also be designated in the inheritance tax return, and
- b. The tax shall be computed according to the relationship of the donee of the power to the persons designated if the possible appointees and takers in default of appointment include any persons more closely related to the donee of the power than to the donor, and if such computation would produce a higher tax.

(7), (7a) Repealed by Session Laws, 1985, c. 656, s. 1.

(8) Where the proceeds of life insurance policies are payable as provided in G.S. 105-13.

(9) Whenever any person or corporation comes into possession or enjoyment of any real or personal property, including bonds of the United States and bonds of a state or subdivision or agency thereof, at or after the death of an individual and by reason of said individual's having entered into a contract or other arrangement with the United States, a state or any person or corporation to pay, transfer or deliver said real or personal property, including bonds of the United States and bonds of a state, to the person or corporation receiving the same, whether said person or corporation is named in the contract or other arrangement or not: Provided, that no tax shall be due or collected on that portion of the real or personal property received under the conditions outlined herein which the person or corporation receiving the same purchased or otherwise acquired by funds or property of the person or corporation receiving the same, or had acquired by a completed inter vivos gift.

Nothing in subdivision (9) shall apply to the proceeds of life insurance policies.

(10) Upon the death of a spouse who had a qualifying income interest for life in qualified terminable interest property whose previous transfer was exempt from inheritance or gift taxes under G.S. 105-3(11) or G.S. 105-188(j), the qualified terminable interest property that was previously exempt is considered to pass from the spouse to the person who is entitled to the property upon the termination of the spouse's qualifying income interest for life.

However, nothing in this Article shall be construed as imposing a tax upon any transfer of intangibles not having a commercial or business situs in this State, by a person, or by reason of the death of a person, who was not a resident of this State at the time of his death, and, if held or transferred in trust, such intangibles shall not

be deemed to have a commercial or business situs in this State merely because the trustee is a resident or, if a corporation, is doing business in this State, unless the same be employed in or held or used in connection with some business carried on in whole or in part in this State.

(b) Nontaxable property passing from one spouse to the other is includible in the deceased spouse's gross estate as follows:

- (1) When real property held by a husband and wife as tenants by the entirety or as joint tenants with the right of survivorship passes to the surviving tenant upon the death of the other tenant, one half of the fair market value of the property is includible in the deceased tenant's gross estate.
- (2) When funds in a joint deposit account or corporate stocks or investment securities held by a husband and wife as joint tenants with the right of survivorship passes to the surviving tenant upon the death of the other tenant, one half of the amount in the deposit account and one half of the fair market value of the stock or securities is includible in the deceased tenant's gross estate. (1939, c. 158, s. 1; 1941, c. 50, s. 2; 1943, c. 400, s. 1; 1951, c. 643, s. 1; 1963, c. 941, ss. 1-3; 1967, c. 1110, s. 1; 1973, c. 1287, s. 2; 1977, c. 918; 1979, c. 801, s. 16; 1983 (Reg. Sess., 1984), c. 1023, s. 2; c. 1035; 1985, c. 656, s. 1; 1989, c. 615; 1996, 2nd Ex. Sess., c. 13, s. 6.4.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment

or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective January 1, 1997, and applicable to the estates of decedents dying on or after that date and to gifts made on or after that date, added subdivision (a)(10).

§ 105-3. Property exempt.

The following property shall be exempt from taxation under this Article:

- (1) Property passing to or for the use of any one or more of the following: the United States, any state, territory or any political subdivision thereof, or the District of Columbia, for exclusively public purposes.
- (2) Property passing to religious, charitable, or educational corporations, or to churches, hospitals, orphan asylums, public libraries, religious, or charitable organizations, or passing to any trustee or trustees for religious or charitable purposes, where such religious, charitable, or educational institutions, corporations, churches, trusts, etc., are located within the State and not conducted for profit.
- (3) Property passing to religious, educational, or charitable corporations, foundations or trusts, not conducted for profit, incorporated or created or administered under the laws of any other state: If such other state levies no inheritance or estate taxes on property similarly passing from residents of such state to religious, educational or

charitable corporations, foundations or trusts incorporated or created or administered under the laws of this State; or if such corporation, foundation or trust is one receiving and disbursing funds donated in this State for religious, educational or charitable purposes.

- (4) The proceeds of all life insurance policies payable to beneficiaries named in subdivisions (1), (2) and (3) of this section. And also proceeds of all policies of insurance and the proceeds of all adjusted service certificates that have been or may be paid by the United States government, or that have been or may be paid on account of policies required to be carried by the United States government or any agency thereof, to the estate, beneficiary, or beneficiaries of any person who has served in the armed forces of the United States or in the merchant marine during the first or second World War or any subsequent military engagement; and proceeds, not exceeding the sum of twenty thousand dollars (\$20,000), of all policies of insurance paid to the estate, beneficiary or beneficiaries of any person whose death was caused by enemy action during the second World War or any subsequent military engagement involving the United States. This provision will be operative only when satisfactory proof that the death was caused by enemy action is filed by the executor, administrator, or beneficiary with the Secretary of Revenue.
- (5) through (7) Repealed by Session Laws 1991, c. 454, s. 1.
- (8) Repealed by Session Laws 1989 (Regular Session, 1990), c. 970, s. 1.
- (9) The total value of death benefits paid to a decedent's estate or a named beneficiary from voluntary pledges made by the North Carolina Highway Patrol or other association of law-enforcement officers employed by the State or a county or municipality, if the benefits are paid from an assessment against the members of the association.
- (10) Property passing to the surviving spouse of a decedent.
- (11) Property transferred to a spouse when the transfer of the property is exempt from federal estate and gift taxes under section 2056(b)(7) of the Code because it is considered qualified terminable interest property. (1939, c. 158, s. 2; 1943, c. 400, s. 1; 1947, c. 501, s. 1; 1951, c. 643, s. 1; 1959, c. 1247; 1973, c. 476, s. 193; 1975, c. 534, s. 1; c. 535; 1977, c. 900, ss. 2, 3; c. 1025; 1979, c. 801, ss. 17-19; 1981 (Reg. Sess., 1982), cc. 1218, 1220; 1983, c. 706, s. 2; c. 713, ss. 63, 64, 82; c. 768, s. 5.2; 1985, c. 83; c. 467, s. 1; c. 656, s. 2; 1989 (Reg. Sess., 1990), c. 970, s. 1; 1991, c. 454, s. 1; 1996, 2nd Ex. Sess., c. 13, s. 6.2.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person

arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective January 1, 1997, and applicable to

the estates of decedents dying on or after that date and to gifts made on or after that date, added subdivision (11).

§ 105-4. Rate of tax — Class A.

(a) Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue, or lineal ancestor, or stepchild of the person who died possessed of such property aforesaid, or child adopted by the decedent in conformity with the laws of this State or of any of the United States, or of any foreign kingdom or nation, or a son-in-law or a daughter-in-law whose spouse is not entitled to any beneficial interest in such property of the person who died possessed of such property aforesaid, at the following rates of tax (for each one hundred dollars (\$100.00) or fraction thereof) of the value of such interest:

First \$	10,000	1 percent
Over \$	10,000 and to \$ 25,000	2 percent
Over \$	25,000 and to \$ 50,000	3 percent
Over \$	50,000 and to \$ 100,000	4 percent
Over \$	100,000 and to \$ 200,000	5 percent
Over \$	200,000 and to \$ 500,000	6 percent
Over \$	500,000 and to \$1,000,000	7 percent
Over \$	1,000,000 and to \$1,500,000	8 percent
Over \$	1,500,000 and to \$2,000,000	9 percent
Over \$	2,000,000 and to \$2,500,000	10 percent
Over \$	2,500,000 and to \$3,000,000	11 percent
Over \$	3,000,000	12 percent

(b) An inheritance tax credit of thirty-three thousand one hundred fifty dollars (\$33,150) is allowed against the tax imposed by this Article on the transfer of property to a Class A beneficiary.

The credit may not exceed the amount of tax imposed by this Article.

This credit is allowed to Class A beneficiaries in the following order:

- (1) Children who are less than 18 years old, and children who are at least 18 years old and who are single, are unable to support themselves because of mental or physical incapacity, and either are members of the decedent's household or, because of their mental or physical incapacity, live in an institution.
- (2) Other Class A Beneficiaries. — The status of a beneficiary is determined as of the date of the decedent's death. When two or more beneficiaries are equally entitled to the credit, the credit shall be allocated among those beneficiaries on a pro rata basis according to their tax liability. (1939, c. 158, s. 3; 1957, c. 1340, s. 1; 1965, c. 583; 1967, c. 1222; 1971, c. 651; 1973, c. 49, s. 1; c. 1142, s. 1; c. 1287, s. 2; 1977, c. 1004; 1979, c. 75; c. 801, ss. 20, 21; 1979, 2nd Sess., c. 1183, s. 1; 1983 (Reg. Sess., 1984), c. 1032; 1985, c. 656, s. 3; 1996, 2nd Ex. Sess., c. 13, s. 6.1.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Ses-

sion, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to

any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective January 1, 1997, and applicable to the estates of decedents dying on or after

that date and to gifts made on or after that date, rewrote the introductory language of subsection (b); and deleted the last sentence of subdivision (b)(1), which read "The credit allowed by this section may not exceed the amount of tax imposed by this Article."

§ 105-7. Estate tax.

CASE NOTES

Source of Funds. — Trust for the benefit of decedent's wife was the proper source of funds for payment of the additional North Carolina estate tax due by reason of inclusion of the value of the

trust in wife's federal taxable estate. *Branch Banking & Trust Co. v. Staples*, 120 N.C. App. 227, 461 S.E.2d 921 (1995).

§ 105-9. Deductions.

In determining the clear market value of property taxed under this Article, or schedule, the following deductions, and no others, shall be allowed:

- (1) Taxes accrued and unpaid at the death of the decedent and unpaid ad valorem taxes accruing during the calendar year of death.
- (2) Drainage and street assessments (fiscal year in which death occurred).
- (3) Reasonable funeral and burial expenses, which shall include bequests and devises in trust, the entire net income from which is to be applied perpetually to the care and preservation of the burial lot or burial grounds within which the decedent is buried, the enclosure thereof and the structures thereon to the extent to which the value of such bequests and devises does not exceed the smaller of the following amounts: One thousand two hundred fifty dollars (\$1,250), or two per centum (2%) of the amount of the decedent's gross estate.
- (4) Debts of decedent.
- (5) Estate and inheritance taxes paid to other states, and death duties paid to foreign countries.
- (6) The amount actually expended for monuments not exceeding the sum of two thousand five hundred dollars (\$2,500).
- (7) Commissions of executors and administrators actually allowed and paid.
- (8) Costs of administration not claimed as a deduction on the federal income tax return filed under the Code by the fiduciary for the decedent's estate. Costs of administration include reasonable attorneys' fees. (1939, c. 158, s. 7; 1941, c. 50, s. 2; 1951, c. 643, s. 1; 1953, c. 1250; 1957, c. 1340, s. 1; 1979, cc. 194, 195; 1996, 2nd Ex. Sess., c. 13, s. 6.5.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Busi-

ness Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of

the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its

amendment or repeal.”

Effect of Amendments. — The 1996 Second Extra Session amendment, effective January 1, 1997, and applicable to the estates of decedents dying on or after that date and to gifts made on or after that date, rewrote subdivision (8).

§ 105-23.1. Making installment payments of tax due when federal estate tax is payable in installments.

A personal representative who elects under section 6166 of the Code to make installment payments of federal estate tax may elect to make installment payments of the tax imposed by this Article. An election under this section extends the time for payment of the tax due in accordance with the extension elected under section 6166 of the Code. Payments of tax are due under this section at the same time and in the same proportion to the total amount of tax due as payments of federal tax under section 6166 of the Code. Acceleration of payments under section 6166 of the Code accelerates the payments due under this section. (1996, 2nd Ex. Sess., c. 13, s. 6.6.)

Editor’s Note. — Session Laws 1996, Second Extra Session, c. 13, s. 10.2(6), made this section effective January 1, 1997, and applicable to the estates of decedents dying on or after that date and to gifts made on or after that date.

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.”

ARTICLE 2.

Schedule B. License Taxes.

§ 105-33. Taxes under this Article.

(a) Taxes in this Article or schedule shall be imposed as State license taxes for the privilege of carrying on the business, exercising the privilege, or doing the act named, and nothing in this Article shall be construed to relieve any person, firm, or corporation from the payment of the tax prescribed in this Article or schedule: Provided, the obtaining of a license required by this Article shall not of itself authorize the practice of a profession, business, or trade for which a State qualification license is required.

(b) **(Effective until July 1, 1997)** If the business made taxable or the privilege to be exercised under this Article is carried on at two or more separate places, a separate State license for each place is required. For the purpose of this Article, a specialty market is not considered a specialty market vendor’s place of business.

(b) **(Effective July 1, 1997)** If the business made taxable or the privilege to be exercised under this Article is carried on at two or more separate places, a separate State license for each place is required.

(c) Every State license issued under this Article or schedule shall be for 12 months, shall expire on the thirtieth day of June of each year, and shall be for the full amount of tax prescribed; provided, that where the tax is levied on an annual basis and the licensee begins such business or exercises such privilege after the first day of January and prior to the thirtieth day of June of each year, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed and levied upon a gross receipts and/or percentage basis for the conducting of such business or the exercising of such privilege to and including the thirtieth day of June, next following. Every county, city and town license issued under this Article or schedule shall be for 12 months, and shall expire on the thirty-first day of May or thirtieth day of June of each year as the governing body of such county, city or town may determine: Provided, that where the licensee begins such business or exercises such privilege after the expiration of seven months of the current license year of such municipality, then such licensee shall be required to pay one half of the tax prescribed other than the tax prescribed to be computed upon a gross receipts and/or percentage basis.

(d) **(Effective until July 1, 1997)** The State license issued under G.S. 105-41, 105-42, 105-45, 105-53, 105-54, 105-55, 105-58, and 105-91 shall be and constitute a personal privilege to conduct the profession or business named in the State license, shall not be transferable to any other person, firm or corporation and shall be construed to limit the person, firm or corporation named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this Article or schedule. Other license issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a sufficient license for the succeeding purchaser for the conduct of the business specified at such location for the balance of the tax year: Provided, that if the holder of a license under this schedule moves the business for which a license has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars (\$5.00) for each license certificate reissued.

(d) **(Effective July 1, 1997)** The State license issued under G.S. 105-41 is a personal privilege to conduct the profession or business named in the State license, is not transferable to any other person, and does not limit the person named in the license to conducting the profession or business and exercising the privilege named in the State license to the county and/or city and location specified in the State license, unless otherwise provided in this Article. Other licenses issued for a tax year for the conduct of a business at a specified location shall upon a sale or transfer of the business be deemed a sufficient license for the succeeding purchaser for the conduct of the business specified at that location for the balance of the tax year. If the holder of a license under this Article moves the business for which a license tax has been paid to another location, a new license may be issued to the licensee at a new location for the balance of the license year, upon surrender of the original license for cancellation and the payment of a fee of five dollars (\$5.00) for each license certificate reissued.

(e) Repealed by Session Laws 1989, c. 584, s. 1.

(f) All State taxes imposed by this Article shall be paid to the Secretary of Revenue, or to one of his deputies; shall be due and payable on or before the first day of July of each year, and after such date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent State license and privilege taxes; provided, that if a person, firm, or corporation begins any business or the exercise of any privilege requiring a license under this Article or schedule after the thirtieth day of June and prior to the thirtieth day of the following June of any year, then such person, firm, or corporation shall apply for and obtain a State license for conducting such business or exercising any such privilege in advance, and before the beginning of such business or the exercise of such privilege; and a failure to so apply and to obtain such State license shall be and constitute a delinquent payment of the State license tax due, and such person, firm, or corporation shall be subject to the remedies available and penalties imposed for the payment of such delinquent taxes.

(g) The taxes imposed and the rates specified in this Article or schedule shall apply to the subjects taxed on and after the first day of June, 1939, and prior to said date the taxes imposed and the rates specified in the Revenue Act of 1937 shall apply.

(h) It shall be the duty of a grantee, transferee, or purchaser of any business or property subject to the State license taxes imposed in this Article to make diligent inquiry as to whether the State license tax has been paid, but when such business or property has been granted, sold, transferred, or conveyed to an innocent purchaser for value and without notice that the vendor owed or is liable for any of the State license taxes imposed under this Article, such property, while in the possession of such innocent purchaser, shall not be subject to any lien for such State license taxes.

(i) The tax collector of a county or city shall issue licenses required under this Article by the governing body of the county or city and shall collect the taxes due for these licenses.

(j) Any person, firm, or corporation who shall wilfully make any false statement in an application for a license under any section of this Article or schedule shall be guilty of a Class 1 misdemeanor, which may include a fine which shall not be less than the amount of tax specified under such section, and shall be in addition to the amount of such tax.

(k) Repealed by Session Laws 1987, c. 190. (1939, c. 158, s. 100; 1943, c. 400, s. 2; 1951, c. 643, s. 2; 1953, c. 981, s. 1; 1963, c. 294, s. 3; 1973, c. 476, s. 193; 1977, c. 657, s. 1; 1981, c. 83, ss. 1, 2; 1985, c. 114, s. 10; 1985 (Reg. Sess., 1986), c. 826, ss. 1, 2; c. 934, s. 3; 1987, c. 190; 1989, c. 584, s. 1; 1989 (Reg. Sess., 1990), c. 814, s. 1; 1991 (Reg. Sess., 1992), c. 981, s. 1; 1993, c. 539, s. 688; 1994, Ex. Sess., c. 24, s. 14(c); 1996, 2nd Ex. Sess., c. 14, ss. 18, 19.)

Subsections (b) and (d) Set Out Twice. — The first version of subsections (b) and (d) set out above is effective until July 1, 1997. The second version of subsections (b) and (d) set out above is effective July 1, 1997.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act

shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999, provides: "Effective July 1, 1999, Article 2B of Chapter 105 of the General Statutes, as amended by this act, is repealed. The Secretary shall retain from collec-

tions under Article 2 of Chapter 105 of the General Statutes the cost of refunding the taxes levied in Article 2B of Chapter 105 of the General Statutes.”

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.”

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.”

“Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the

statutes that would be applicable but for this act remain applicable to those prosecutions.”

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 14, ss. 18 and 19, effective July 1, 1997, deleted the last sentence of subsection (b), which read “For the purpose of this Article, a specialty market is not considered a specialty market vendor’s place of business”; and in subsection (d) substituted “G.S. 105-41 is” for “G.S. 105-41, 105-42, 105-45, 105-53, 105-54, 105-55, 105-58, and 105-91 shall be and constitute,” substituted “is not transferable to any other person, and does not limit the person” for “shall not be transferable to any other person, firm or corporation and shall be construed to limit the person, firm or corporation,” deleted “or schedule” from the end of the first sentence, in the second sentence substituted “Other licenses” for “Other license,” substituted “that location” for “such location,” substituted “year” for “year: Provided, that,” and in the third sentence substituted “Article” for “schedule,” and inserted “tax” preceding “has been paid.”

§§ 105-36 through 105-37: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For these sections as in effect until July 1, 1997, see the main volume.

Editor’s Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

“Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.”

§ 105-38. Amusements — Circuses, menageries, wild west, dog and/or pony shows, etc.

(a) Every person, firm, or corporation engaged in the business of exhibiting performances, such as a circus, menagerie, wild west show, dog and/or pony show, or any other show, exhibition or performance similar thereto, not taxed in other sections of this Article, shall apply for and obtain a State license from the Secretary of Revenue for the privilege of engaging in such business, and pay for such license a tax of fifty dollars (\$50.00) for each day or part of a day for each place in the State where exhibitions or performances are to be given.

(b) Every person, firm, or corporation by whom any show or exhibition taxed under this section is owned or controlled shall file

with the Secretary of Revenue, not less than five days before entering this State for the purpose of such exhibitions or performances therein, a statement, under oath, setting out in detail such information as may be required by the Secretary of Revenue covering the places in the State where exhibitions or performances are to be given, the character of the exhibitions, and such other and further information as may be required. Upon receipt of such statement, the Secretary of Revenue shall fix and determine the amount of State license tax with which such person, firm, or corporation is chargeable, shall endorse his findings upon such statement, and shall transmit a copy of such statement and findings to each such person, firm, or corporation to be charged, to the sheriff or tax collector of each county in which exhibitions or performances are to be given, and to the division deputy of the Secretary of Revenue, with full and particular instructions as to the State license tax to be paid. Before giving any of the exhibitions or performances provided for in such statement, the person, firm, or corporation making such statement shall pay the Secretary of Revenue the tax so fixed and determined. If one or more of such exhibitions or performances included in such statement and for which the tax has been paid shall be canceled, the Secretary of Revenue may, upon proper application made to him, refund the tax for such canceled exhibitions or performances. Every such person, firm, or corporation shall give to the Secretary of Revenue a notice of not less than five days before giving any of such exhibitions or performances in each county.

(c) The sheriff of each county in which such exhibitions or performances are advertised to be exhibited shall promptly communicate such information to the Secretary of Revenue; and if the statement required in this section has not been filed as provided herein, or not filed in time for certified copies thereof, with proper instructions, to be transmitted to the sheriffs of the several counties and the division deputy, the Secretary of Revenue shall cause his division deputy to attend at one or more points in the State where such exhibitions or performances are advertised or expected to exhibit, for the purpose of securing such statement prescribed in this section, of fixing and determining the amount of State license tax with which such person, firm, or corporation is taxable, and to collect such tax or give instructions for the collection of such tax.

(d) Every such person, firm, or corporation by whom or which any such exhibition or performance described in this section is given in any county, city or town, or within five miles thereof, wherein is held an annual agricultural fair, during the week of such annual agricultural fair, shall pay a State license of one thousand dollars (\$1,000) for each exhibition or performance in addition to the license tax first levied in this section, to be assessed and collected by the Secretary of Revenue or his duly authorized deputy.

(e) The provisions of this section, or any other section of this Article, shall not be construed to allow without the payment of the tax imposed in this section, any exhibition or performance described in this section for charitable, benevolent, educational, or any other purpose whatsoever, by any person, firm, or corporation who is engaged in giving such exhibitions or performances, no matter what terms of contract may be entered into or under what auspices such exhibitions or performances are given. It being the intent and purpose of this section that every person, firm, or corporation who or

which is engaged in the business of giving such exhibitions or performances, whether a part or all of the proceeds are for charitable, benevolent, educational, or other purposes or not, shall pay the State license tax imposed in this section.

(f) Upon all performances taxable under this section there is levied, in addition to the license tax levied in this section, a tax upon the gross receipts of such business at the rate of three percent (3%). The license tax herein levied shall be treated as an advance payment of the tax upon gross receipts herein levied, and the license tax shall be applied as a credit upon or advance payment of the gross receipts tax. The Secretary of Revenue may adopt such regulations as may be necessary to effectuate the provisions of this section and shall prescribe the form and character of reports to be made, and shall have such authority of supervision as may be necessary to effectuate the purpose of this Subchapter.

(g) **(Repealed effective July 1, 1997)** In lieu of the tax levied in G.S. 105-86, each circus, or other form of amusement taxed under this section, advertising by means of outdoor advertising displays, a bill posting or as otherwise defined in G.S. 105-86, shall pay a tax of one hundred dollars (\$100.00) for a statewide license for the privilege of advertising in this manner, said tax to be in addition to the other taxes levied in this section.

(h) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one half of the license tax levied by the State, but shall not levy a parade tax or a tax under subsection (g) of this section. (1939, c. 158, s. 106; 1973, c. 476, s. 193; 1981, c. 83, s. 3; 1989, c. 584, s. 6; 1989 (Reg. Sess., 1990), c. 814, s. 2; 1996, 2nd Ex. Sess., c. 14, s. 20.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed

statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1997, repealed subsection (g).

§ 105-42: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§§ 105-45, 105-46: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For these sections as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 105-50: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 105-51.1: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 105-53. (Repealed effective July 1, 1997) Peddlers, itinerant merchants, and specialty market operators.

(a) Peddler. — Every person engaged in business or employed as a peddler shall obtain a license from the Secretary of Revenue for the privilege of peddling goods and shall pay a tax for the license in the amount specified in this section. A "peddler" is a person who travels from place to place with an inventory of goods, who sells the goods at retail or offers the goods for sale at retail, and who delivers the identical goods he carries with him. A peddler of only farm products shall pay a tax of twenty-five dollars (\$25.00) regardless of the number of counties in which he peddles goods. A peddler who travels from place to place on foot, selling goods other than or in addition to farm products, shall pay a tax of ten dollars (\$10.00) for

§ 105-53 has a delayed repeal date. See notes

each county in which he peddles goods. A peddler who travels from place to place by vehicle, selling goods other than or in addition to farm products, shall pay a tax of twenty-five dollars (\$25.00) for each county in which he peddles goods.

(b) Itinerant Merchant. — Every person engaged in business as an itinerant merchant shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of one hundred dollars (\$100.00) for each county in which he is engaged in business. An “itinerant merchant” is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other location in a county and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. An itinerant merchant's license is not required to engage in the business of a specialty market vendor at a location licensed as a specialty market under subsection (c) of this section or at a specialty market that is exempt from the license requirement under subsection (c) because the specialty market operator is the State or a unit of local government. A merchant who sells goods, other than farm products, in a county for less than six consecutive months is considered an itinerant merchant unless he stopped selling goods in that county because of his death or disablement, the insolvency of his business, or the destruction of his inventory by fire or other catastrophe.

(c) Specialty Market Operator. — Every person, other than the State or a unit of local government, engaged in business as a specialty market operator shall obtain a license from the Secretary of Revenue for the privilege of engaging in business and shall pay a tax for the license of two hundred dollars (\$200.00) for each county in which he is engaged in business. A “specialty market operator” is a person, other than the State or a unit of local government, who rents space, at a location other than a permanent retail store, to others for the purpose of selling goods at retail or offering goods for sale at retail.

(d) Specialty Market Vendor. — The requirements and penalties set out in subsections (i) through (m) of this section apply to every person engaged in business as a specialty market vendor who is liable for retail sales tax under Article 5 of this Chapter. A “specialty market vendor” is a merchant, other than a merchant with an established retail store in the county, who transports an inventory of goods to a specialty market licensed under subsection (c) of this section and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail. A “specialty market” is a location, other than a permanent retail store, where space is rented to others for the purpose of selling goods at retail or offering goods for sale at retail.

(e) Exemptions. — This section does not apply to the following:

- (1) A peddler or itinerant merchant:
 - a. Who sells farm or nursery products produced by him;
 - b. Who sells crafts or goods made by him or his own household personal property;
 - c. Who is a nonprofit charitable, educational, religious, scientific, or civic organization;
 - d. Who sells printed material, wood for fuel, ice, seafood, meat, poultry, livestock, eggs, dairy products, bread, cakes, or pies; or

§ 105-53 has a delayed repeal date. See notes

- e. Who is an authorized automobile dealer licensed pursuant to Chapter 20 of the General Statutes.
- (2) A peddler who maintains a fixed permanent location from which he makes at least ninety percent (90%) of his sales, but who sells some goods in the county of his fixed location by peddling.
- (3) An itinerant merchant:
 - a. Who locates at a farmer's market;
 - b. Who is part of the State Fair or an agriculture fair which is licensed by the Commissioner of Agriculture pursuant to G.S. 106-520.3; or
 - c. Who sells goods at an auction conducted by an auctioneer licensed pursuant to Chapter 85B of the General Statutes.
- (4) A peddler who complies with the requirements of G.S. 25A-38 through G.S. 25A-42, or who complies with the requirements of G.S. 14-401.13.
- (f) Person Defined. — As used in this section, "person" has the same meaning as in G.S. 105-164.3(11).
- (g) County Exemption. — The board of county commissioners of any county in this State, upon proper application, may exempt from the annual license tax levied upon peddlers and itinerant merchants in this section disabled veterans of World War I, World War II, Korean Conflict, and Vietnam Era, who have been bona fide residents of this State for 12 or more months continuously, and widows with dependent children; and when so exempted, the board of county commissioners shall furnish such person or persons with a certificate of exemption, and such certificate shall entitle the holder thereof to sell within the limits of the county without payment of any license tax to the State.
- (h) Repealed by Session Laws 1989, c. 435, s. 1.
- (i) Display and Possession of Licenses and Identification. — An itinerant merchant shall keep both the license required by this section and the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant at the places or locations at which the goods are to be sold or offered for sale. A peddler shall have the license required by this section and the retail sales tax license with him at all times he offers goods for sale and must produce them upon the request of any customer, State or local revenue agent, or law enforcement agent. A specialty market vendor shall keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are to be sold or offered for sale. A specialty market operator shall have the license required by this section available for inspection during all times that the specialty market is open and must produce it upon the request of any customer, State or local revenue agent, or law enforcement agent.

Upon the request of any customer, State or local revenue agent, or law enforcement agent, a peddler, itinerant merchant, specialty market operator, or specialty market vendor shall provide its name and permanent address. If the peddler, itinerant merchant, specialty market operator, or specialty market vendor is not a corporation, he shall, upon the request of any customer, State or local

§ 105-53 has a delayed repeal date. See notes

revenue agent, or law enforcement agent, provide a valid driver's license, a special identification card issued under G.S. 20-37.7, military identification, or a passport bearing a physical description of the person named reasonably describing the peddler, itinerant merchant, specialty market operator, or specialty market vendor. If the peddler, itinerant merchant, specialty market operator, or specialty market vendor is a corporation, it shall, upon the request of any customer, State or local revenue agent, or law enforcement agent, give the name and registered agent of the corporation and the address of the registered office of the corporation, as filed with the North Carolina Secretary of State.

(i1) Records of Source of New Merchandise. — Each peddler, itinerant merchant, and specialty market vendor shall keep a written record of the source of new merchandise the merchant offers for sale. The record must be a receipt or an invoice from the person who sold the merchandise to the merchant. The invoice or receipt must specifically identify the product being sold by product name and quantity purchased and must contain the complete business name of the seller and a description of the type of business. If the seller was an individual, the receipt or invoice must contain the seller's drivers license number, its state of issuance and expiration date, and the seller's date of birth. The merchant must verify this information by comparing the seller's drivers license to the invoice or receipt and signing the invoice or receipt. A special identification card issued by the Division of Motor Vehicles may be used in place of the seller's drivers license for the purposes of providing and verifying information required under this subsection. If the seller was a corporation, the receipt or invoice must contain the corporation's federal tax identification number, the state of incorporation, the name and address of the corporation's registered agent in this State, if any, and the corporation's principal office address.

The merchant shall keep the record with the new merchandise being offered for sale and shall maintain the record for a period of three years after the merchandise is sold. Upon the request of a law enforcement agent, the merchant shall produce the record of the source of new merchandise the merchant offers for sale. A merchant's failure to produce either the requested record pursuant to this subsection or an affidavit pursuant to subsection (i2) of this section within a reasonable time of request by a law enforcement agent is prima facie evidence of possession of stolen property. Pending the production of the requested record or affidavit, the agent may take the merchandise into custody as evidence at the time the request is made. Merchandise impounded under this subsection must be disposed of in accordance with G.S. 15-11.1.

(i2) Affidavit in Lieu of Records. — The merchant may satisfy the record requirement of subsection (i1) of this section by producing, in lieu of a receipt or invoice, an affidavit under oath or affirmation identifying the source of the merchandise for which a record is requested, including the name and address of the seller, the license number of any auctioneer seller, and the date and place of purchase of the merchandise.

(i3) Notice of Records Requirement. — A specialty market operator shall conspicuously post in plain view of all specialty market vendors a sign informing all vendors that, effective July 1, 1996, failure to produce, upon the request of a law enforcement agent,

§ 105-53 has a delayed repeal date. See notes

either the records required under subsection (i1) of this section or an affidavit pursuant to subsection (i2) of this section is prima facie evidence of possession of stolen property.

(j) **Permission of Property Owner.** — An itinerant merchant or a peddler who travels from place to place by vehicle, in addition to other requirements of this section, shall obtain a written statement signed by the owner or lessee of any property upon which the itinerant merchant or peddler offers goods for sale giving the owner's or lessee's permission to offer goods for sale upon the property of the owner or lessee. Such statement shall clearly state the name of the owner or lessee, the location of the premises for which the permission is granted, and the dates during which the permission is valid. Further, such statement shall be conspicuously and prominently displayed, so as to be visible for inspection by patrons of the itinerant merchant or peddler, at the places or locations at which the goods are to be sold or offered for sale.

(k) **Specialty Market Registration List.** — A specialty market operator shall maintain a daily registration list of all specialty market vendors selling or offering goods for sale at the specialty market. This registration list shall clearly and legibly show each specialty market vendor's name, permanent address, and retail sales and use tax registration number. The specialty market operator shall require each specialty market vendor to exhibit a valid retail sales tax license for visual inspection by the specialty market operator at the time of registration, and shall require each specialty market vendor to keep the retail sales tax license conspicuously and prominently displayed, so as to be visible for inspection by patrons of the specialty market vendor at the places or locations at which the goods are offered for sale. Each daily registration list maintained pursuant to this subsection shall be retained by the specialty market operator for no less than two years and shall at any time be made available upon request to any law enforcement officer.

(l) **Misdemeanor Violations.** — It shall be a Class 3 misdemeanor for a person to do any of the following:

- (1) Fail to obtain a license as required by this section.
- (2) Knowingly give false information in the application process for a license or when registering pursuant to subsection (k).
- (3) If the person is an itinerant merchant, fail to display the license as required by subsection (i); if the person is a peddler or specialty market operator, fail to produce the license as required by subsection (i); or, if the person is required to do so, fail to comply with subsection (j). Whenever satisfactory evidence shall be presented in any court of the fact that a license was required by this section and such license was not displayed or produced as required by subsection (i), or that permission was required by subsection (j) of this section and was not displayed, the peddler, itinerant merchant, or specialty market operator shall be found not guilty of that violation provided he produces in court a valid license or valid permission which had been issued prior to the time he was charged with such violation.
- (4) Fail to provide name, address, or identification upon request as required by subsection (i) or provide false information in response to such a request.
- (5) Repealed by Session Laws 1995, c. 378, s. 5, effective December 1, 1995.

§ 105-53 has a delayed repeal date. See notes

It shall be a Class 1 misdemeanor to fail to either keep a record of new merchandise offered for sale as required by subsection (i1) of this section or to produce an affidavit pursuant to subsection (i2) of this section. It shall be a Class 1 misdemeanor to falsify a record required by subsection (i1) of this section.

(71) Additional Misdemeanor Violations. — It shall be a Class 3 misdemeanor, which may include a fine of up to one thousand dollars (\$1,000), for a specialty market operator to fail to comply with subsection (k) or for a specialty market vendor to fail to display the retail sales tax license as required by subsection (i). For the purposes of this section, the requirement that a retail sales tax license be displayed is satisfied if the vendor displays either (i) a copy of the license or (ii) evidence that the license has been applied for and the applicable license fee has been paid within 30 days before the date the license was required to be displayed. Whenever satisfactory evidence shall be presented in any court of the fact that display of a retail sales tax license was required by this section and such license was not displayed, the specialty market operator or vendor shall not be found guilty of that violation provided he produces in court a valid license which had been issued prior to the time he was charged with the violation.

(m) Local License. — Counties and cities may levy a license tax on a business taxed under this section in an amount that does not exceed the State tax. Further, this section does not affect the authority of a county or city to impose additional requirements on peddlers, itinerant merchants, specialty market vendors, or specialty market operators by an ordinance adopted under G.S. 153A-125 or G.S. 160A-178. (1939, c. 158, s. 121; 1941, c. 50, s. 3; 1943, c. 400, s. 2; 1945, c. 708, s. 2; 1951, c. 643, s. 2; 1955, c. 1315; 1973, c. 476, s. 193; 1979, c. 74; 1981, c. 16; 1987, c. 213, s. 1; c. 708, ss. 1-6; 1987 (Reg. Sess., 1988), c. 1081, s. 2; 1989, c. 435; 1989 (Reg. Sess., 1990), c. 814, s. 3; 1993, c. 539, ss. 690, 691; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 731, s. 1; 1995, c. 378, ss. 2-6; 1995 (Reg. Sess., 1996), c. 646, s. 1.)

Section Repealed Effective July 1, 1997. This section is repealed, effective July 1, 1997, by Session Laws 1996, Second Extra Session, c. 14, s. 17.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the

amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added "Affidavit in Lieu of Records" as the subcatchline for subsection (i2).

§§ 105-54, 105-55: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For these sections as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, pro-

vides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed

statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 105-58: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§§ 105-60, 105-61: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For these sections as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 105-62: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§§ 105-65, 105-65.1: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For these sections as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996,

Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or

another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

“Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.”

§ 105-66.1: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

“Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.”

§ 105-70: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

“Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.”

§ 105-72: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

“Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.”

§ 105-74: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: “This act does not affect the rights

or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit

of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

“Prosecutions for offenses committed

before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.”

§ 105-75.1: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor’s Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

“Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.”

§ 105-77: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor’s Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

“Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.”

§ 105-80: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor’s Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

“Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.”

§§ 105-85, 105-86: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For these sections as in effect until July 1, 1997, see the main volume.

Editor’s Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or

another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or

repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are

not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§§ 105-89 through 105-90: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For these sections as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 105-91: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§§ 105-97 through 105-99: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For these sections as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 105-102.1: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights

or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are

not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 105-102.5: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 17, effective July 1, 1997.

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of

a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

DIVISION I. ADMINISTRATIVE PROVISIONS OF
SCHEDULE B.

§ 105-109.1. (Effective July 1, 1997) Interest.

The taxes on gross receipts levied in G.S. 105-37.1(a) and G.S. 105-38(f), the tax on installment paper dealers levied in G.S. 105-83(b), and the tax on publishers of newsprint publications levied in G.S. 105-102.6, shall bear interest at the rate established under G.S. 105-241.1(i) from the time the taxes were due until the taxes are paid. (1979, c. 704; 1989 (Reg. Sess., 1990), c. 814, s. 5; 1991, c. 539, s. 3; 1995, c. 459, s. 2; 1996, 2nd Ex. Sess., c. 14, s. 21.)

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed

statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective July 1, 1997, substituted "G.S. 105-37.1(a) and G.S. 105-38(f)" for "G.S. 105-37.1(a), 105-38(f), and 105-65.1(b)(2)."

ARTICLE 2B.

Schedule B-B. Soft Drink Tax.

§ 105-113.41: Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999.

For this section as in effect until July 1, 1999, see the main volume.

Editor's Note. — Session Laws 1996,

Second Extra Session, c. 13, s. 4.2, effective July 1, 1999, provides: "Effective July 1, 1999, Article 2B of Chapter 105 of

the General Statutes, as amended by this act, is repealed. The Secretary shall retain from collections under Article 2 of Chapter 105 of the General Statutes the cost of refunding the taxes levied in Article 2B of Chapter 105 of the General Statutes."

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

§ 105-113.42: Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999.

For this section as in effect until July 1, 1999, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999, provides: "Effective July 1, 1999, Article 2B of Chapter 105 of the General Statutes, as amended by this act, is repealed. The Secretary shall retain from collections under Article 2 of Chapter 105 of the General Statutes the cost of refunding the taxes levied in Article 2B of Chapter 105 of the General Statutes."

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§ 105-113.44: Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999.

For this section as in effect until July 1, 1999, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999, provides: "Effective July 1, 1999, Article 2B of Chapter 105 of the General Statutes, as amended by this act, is repealed. The Secretary shall retain from collections under Article 2 of Chapter 105 of the General Statutes the cost of refunding the taxes levied in Article 2B of Chapter 105 of the General Statutes."

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act

shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

CASE NOTES

Cited in John R. Sexton & Co. v. Justus, 342 N.C. 374, 464 S.E.2d 268 (1995).

§ 105-113.45. (Effective until July 1, 1997) Excise taxes on soft drinks and base products.

(a) Bottled Soft Drinks. — An excise tax of three-fourths cent ($\frac{3}{4}\text{¢}$) is levied on each bottled soft drink.

(b) Repealed by Session Laws 1991, c. 689, s. 276.

(c) Liquid Base Products. — An excise tax at the rate of seventy-five cents (75¢), a gallon is levied on each individual container of a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.

(d) Dry Base Products. — An excise tax is levied on each individual container of a dry base product at the rate:

(1) Of three-fourths cent ($\frac{3}{4}\text{¢}$) an ounce if the dry base product is not converted into a syrup or other liquid base product before it is used to make a soft drink.

(2) That would apply under subsection (c) to the resulting liquid base product if the dry base product is converted into a liquid base product before it is used to make a soft drink.

(e) Repealed by Session Laws 1991, c. 689, s. 276. (1969, c. 1075, s. 3; 1973, c. 476, s. 193; 1991, c. 689, s. 276; 1991 (Reg. Sess., 1992), c. 955, s. 14; 1993 (Reg. Sess., 1994), c. 745, s. 3; 1995, c. 474, s. 1.)

Section Set Out Twice. — The section above is effective until July 1, 1997. For this section as in effect July 1, 1997, see the following section, also numbered § 105-113.45.

Effect of Amendments. — The 1995 amendment, effective July 1, 1996, substituted “three-fourths cent ($\frac{3}{4}\text{¢}$)” for “one cent (1¢)” in subsection (a); substi-

tuted “seventy-five cents (75¢)” for “one dollar (\$1.00) a gallon” in subsection (c); and substituted “three-fourths cent ($\frac{3}{4}\text{¢}$)” for “one cent (1¢)” in subdivision (d)(1).

Session Laws 1995 (Reg. Sess., 1996), c. 646, s. 2, effective June 21, 1996, inserted “a gallon” preceding “is levied” in the first sentence of subsection (c).

§ 105-113.45. (Effective July 1, 1997 — see editor’s note for repeal date) Excise taxes on soft drinks and base products.

(a) Bottled Soft Drinks. — An excise tax at the applicable rate provided in the following table is levied on each bottled soft drink.

Date Tax Accrues	Rate
From 7/1/96 until 6/30/97	$\frac{3}{4}\text{¢}$
From 7/1/97 until 6/30/98	$\frac{1}{2}\text{¢}$
After 7/1/98	$\frac{1}{4}\text{¢}$

(b) Repealed by Session Laws 1991, c. 689, s. 276.

(c) Liquid Base Products. — An excise tax at the applicable per-gallon rate provided in the table below is levied on each individual container of a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.

Date Tax Accrues	Rate
From 7/1/96 until 6/30/97	75¢
From 7/1/97 until 6/30/98	50¢
After 7/1/98	25¢

(d) Dry Base Products. — An excise tax is levied on each individual container of a dry base product at:

(1) The applicable per-ounce rate in the table below if the dry

§ 105-113.45 is set out twice. See notes.

base product is not converted into a syrup or other liquid base product before it is used to make a soft drink.

Date Tax Accrues	Rate
From 7/1/96 until 6/30/97	3/4¢
From 7/1/97 until 6/30/98	1/2¢
After 7/1/98	1/4¢

(2) The rate that would apply under subsection (c) to the resulting liquid base product if the dry base product is converted into a liquid base product before it is used to make a soft drink.

(e) Repealed by Session Laws 1991, c. 689, s. 276. (1969, c. 1075, s. 3; 1973, c. 476, s. 193; 1991, c. 689, s. 276; 1991 (Reg. Sess., 1992), c. 955, s. 14; 1993 (Reg. Sess., 1994), c. 745, s. 3; 1995 (Reg. Sess., 1996), c. 646, § 2; 1996, 2nd Ex. Sess., c. 13, ss. 4.1, 4.2.)

Section Set Out Twice. — The section above is effective July 1, 1997. For the section as amended effective until July 1, 1997, see the previous section, also numbered § 105-113.45.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999, provides that Article 2B of Chapter 105 of the General Statutes, as amended by this act, is repealed effective July 1, 1999. Furthermore, the Secretary shall retain from collections under Article 2 of Chapter 105 of the General Statutes the cost of refunding the taxes levied in Article 2B of Chapter 105 of the General Statutes."

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person

arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — Session Laws 1996, Second Extra Session, c. 13, s. 4.1, effective July 1, 1997, in subsection (a), substituted "at the applicable rate provided in the following table" for "of three-fourths cent (¾¢)" and added the table; in subsection (c) substituted "applicable per-gallon rate provided in the table below" for "rate of seventy-five cents (75¢) a gallon" and added the table; and in subsection (d) deleted "the rate" from the end of the introductory language, in subdivision (d)(1) substituted "The applicable per-ounce rate in the table below" for "Of three-fourths cent (¾¢) an ounce" and added the table, and added "The rate" at the beginning of subdivision (d)(2).

CASE NOTES

Concentrated juice products did not qualify for exemption without proper registration as required under the Soft

Drink Tax Act. *John R. Sexton & Co. v. Justus*, 342 N.C. 374, 464 S.E.2d 268 (1995).

§ 105-113.46. (Repealed effective July 1, 1999) Exemptions.

The taxes imposed by this Article do not apply to an item that is listed in this section and, if the item is a bottled soft drink or a juice concentrate included in subdivision (3) or (3a), is registered with the Secretary in accordance with G.S. 105-113.47:

(1) Repealed by 1996, Second Extra Session, c. 18, s. 15.4(a), effective retroactively to October 1, 1991.

- (2) A bottled soft drink that contains milk.
- (3) Natural juice.
- (3a) Juice that would be natural if it did not contain sugar.
- (4) Natural water.
- (5) A base product used to make a bottled soft drink subject to tax under this Article.
- (6) Coffee or tea in any form.
- (7) A bottled soft drink or base product sold outside the State.
- (8) A bottled soft drink or base product sold to the federal government.
- (9) A base product for domestic use that either contains milk or, according to directions on the base product's container, requires milk to be added to make a soft drink. (1969, c. 1075, s. 3; 1991, c. 689, s. 277; 1991 (Reg. Sess., 1992), c. 955, s. 15; 1993 (Reg. Sess., 1994), c. 745, s. 38.2(a); 1996, 2nd Ex. Sess., c. 18, s. 15.4(a).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999, provides that Article 2B of Chapter 105 of the General Statutes, as amended by this act, is repealed effective July 1, 1999. Furthermore, the Secretary shall retain from collections under Article 2 of Chapter 105 of the General Statutes the cost of refunding the taxes levied in Article 2B of Chapter 105 of the General Statutes."

Session Laws 1996, Second Extra Session, c. 18, s. 15.4(c), provides: "A taxpayer who paid an excise tax on a prod-

uct that is exempt under this section may apply for a refund of the tax by submitting an application for refund to the Department of Revenue by January 1, 1997. A taxpayer who submits a timely application may receive a refund in an amount equal to the amount of taxes paid on the item since October 1, 1991, along with interest at the rate provided in G.S. 105-266 for refunds of overpaid taxes. If any penalties have been assessed for failure to pay this tax, these penalties shall be waived and, if the penalties have been paid, they shall be refunded to the taxpayer. The application must be in the form and contain the information required by the Secretary of Revenue."

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective retroactively as of October 1, 1991, substituted "(3)" for "(2), (3)" in the introductory language; deleted former subdivision (1), which read "A natural liquid milk drink produced by a farmer or a dairy"; and substituted "milk" for "at least thirty-five percent (35%) natural milk measured by volume and is not exempt under subdivision (1)" in subdivision (2).

§ 105-113.47. (Repealed effective July 1, 1999) Registration of certain exempt bottled soft drinks and juice concentrates.

(a) Requirement. — To be exempt from the tax imposed by this Article, the following items must be registered with the Secretary as an exempt item:

- (1) Repealed by 1996, Second Extra Session, c. 18, s. 15.4(b), effective retroactively to October 1, 1991.
- (2) A natural juice bottled soft drink.

§ 105-113.47 has a delayed repeal date. See notes.

(3) A natural juice concentrate.

(4) A juice concentrate or juice bottled soft drink that would be natural if it did not contain sugar.

To register an item as exempt, the person who controls the brand name or formula of the item must file an application for registration with the Secretary on a form provided by the Secretary. An application must include an affidavit stating the complete and itemized formula by volume of the bottled soft drink or juice concentrate that is the subject of the application.

(b) Determination. — The Secretary shall determine whether a bottled soft drink or a juice concentrate for which an application for registration is filed meets the criteria for exemption. To make the determination, the Secretary or a representative of the Secretary may require the person who filed the registration application for the item or anyone who sells the item in this State to provide a sample of the item and may have the sample analyzed by a chemist to verify the accuracy of the submitted formula.

(c) No Disclosure. — Except as required by law or allowed under this subsection, the Secretary or an agent or employee of the Secretary may not disclose part or all of the formula of an item for which an application for registration is filed. The Secretary may disclose whether an item meets the exemption criteria and the Attorney General or other legal representative of the State may examine the formula for an item if the grant or denial of an exemption for the item is challenged.

(d) Effect. — Registration as an exempt item applies prospectively to sales of the registered bottled soft drink or registered juice concentrate made on or after the date of registration. Registration does not relieve a person of liability for taxes due on sales made before the date an item is registered. (1969, c. 1075, s. 3; 1973, c. 476, s. 193; 1991, c. 689, s. 278; 1993 (Reg. Sess., 1994), c. 745, s. 38.2(b); 1996, 2nd Ex. Sess., c. 18, s. 15.4(b).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.2, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1996-97 fiscal year, the textual provisions of this act apply only to funds appropriated for, and activities occurring during, the 1996-97 fiscal year."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999, provides that Article 2B of Chapter 105 of the General Statutes, as amended by this act, is repealed effective July 1, 1999. Furthermore, the Secretary shall retain from collections under Article 2 of

Chapter 105 of the General Statutes the cost of refunding the taxes levied in Article 2B of Chapter 105 of the General Statutes."

Session Laws 1996, Second Extra Session, c. 18, s. 15.4(c), provides: "A taxpayer who paid an excise tax on a product that is exempt under this section may apply for a refund of the tax by submitting an application for refund to the Department of Revenue by January 1, 1997. A taxpayer who submits a timely application may receive a refund in an amount equal to the amount of taxes paid on the item since October 1, 1991, along with interest at the rate provided in G.S. 105-266 for refunds of overpaid taxes. If any penalties have been assessed for failure to pay this tax, these penalties shall be waived and, if the penalties have been paid, they shall be refunded to the taxpayer. The application must be in the form and contain the

information required by the Secretary of Revenue.”

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective retroactively as of October 1, 1991, deleted former subdivi-

sion (a)(1), which read “A bottled soft drink that contains at least thirty-five percent (35%) natural milk measured by volume and is not exempt under G.S. 105-113.46(1).”

CASE NOTES

Effect of 1991 Amendment. — The legislature, through the 1991 amendment, simply clarified that the Soft Drink Tax Act required that taxpayers must register concentrated products before being entitled to an exemption from taxation under the Act. *John R. Sexton & Co. v. Justus*, 342 N.C. 374, 464 S.E.2d 268 (1995).

Concentrates Must Be Registered.

— Concentrated juice products did not qualify for exemption without proper registration as required under the Soft Drink Tax Act. *John R. Sexton & Co. v. Justus*, 342 N.C. 374, 464 S.E.2d 268 (1995).

§§ 105-113.50 through 105-113.53: Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999.

For these sections as in effect until July 1, 1999, see the main volume.

§§ 105-113.57, 105-113.58: Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999.

For these sections as in effect until July 1, 1999, see the main volume.

§§ 105-113.63, 105-113.64: Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 4.2, effective July 1, 1999.

For these sections as in effect until July 1, 1999, see the main volume.

ARTICLE 2C.

Schedule B-C. Alcoholic Beverage License and Excise Taxes.

Part 4. Excise Taxes, Distribution of Tax Revenue.

§ 105-113.81A. Distribution of part of wine taxes attributable to North Carolina wine.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 25.2(a), effective August 3,

1996, amended Session Laws 1987, c. 836, s. 3, by deleting the termination date of June 30, 1997.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Session Laws 1996, Second Extra Session, c. 18, s. 25.2(b), effective August 3, 1996, repealed Session Laws 1987, c. 1036, s. 12(b), as amended by Session Laws 1991, c. 900, s. 176(b), repealing the expiration date of June 30, 1997.

§ 105-113.82. Distribution of part of beer and wine taxes.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 25.2(a), effective August 3, 1996, amended Session Laws 1987, c. 836, s. 3, by deleting the termination date of June 30, 1997.

Session Laws 1996, Second Extra Ses-

sion, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

ARTICLE 3.

Schedule C. Franchise Tax.

§§ 105-117, 115-118: Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 3, effective June 21, 1996.

§ 105-122. Franchise or privilege tax on domestic and foreign corporations.

(a) Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this Article or schedule, shall, on or before the fifteenth day of the third month following the end of its income year, annually, make and deliver to the Secretary of Revenue in such form as he may prescribe a full, accurate and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing such facts and information as may be required by the Secretary of Revenue as shown by the books and records of the corporation at the close of such income year.

There shall be annexed to the return required by this subsection the affirmation of the officer signing the return in the following form: "Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete. If prepared by a person other than taxpayer, his affirmation is based on all information of which he has any knowledge."

(b) Every such corporation taxed under this section shall determine the total amount of its issued and outstanding capital stock, surplus and undivided profits; no reservation or allocation from surplus or undivided profits shall be allowed other than for definite and accrued legal liabilities, except as herein provided; taxes accrued, dividends declared and reserves for depreciation of tangible assets as permitted for income tax purposes shall be treated as deductible liabilities. There shall also be treated as a deductible

liability reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or streams, lakes, or rivers, upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment, Health, and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that the Environmental Management Commission or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of purchasing and installing equipment or constructing facilities for the purpose of recycling or resource recovering of or from solid waste or for the purpose of reducing the volume of hazardous waste generated shall be treated as deductible for the purposes of this section upon condition that the corporation claiming such deductible liability shall furnish to the Secretary a certificate from the Department of Environment, Health, and Natural Resources certifying that the Department of Environment, Health, and Natural Resources has found as a fact that the equipment or facility has actually been purchased, installed or constructed, that it is in conformance with all rules and regulations of the Department of Environment, Health, and Natural Resources, and the recycling or resource recovering is the primary purpose of the facility or equipment. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955. Treasury stock shall not be considered in computing the capital stock, surplus and undivided profits as the basis for franchise tax, but shall be excluded proportionately from said capital stock, surplus and undivided profits as the case may be upon the basis and to the extent of the cost thereof. In the case of an international banking facility, the capital base shall be reduced by the excess of the amount as of the end of the taxable year of all assets of an international banking facility which are employed outside the United States over liabilities of the

international banking facility owed to foreign persons. For purposes of such reduction, foreign persons shall have the same meaning as defined in G.S. 105-130.5(b)(13)d.

Every corporation doing business in this State which is a parent, subsidiary, or affiliate of another corporation shall add to its capital stock, surplus and undivided profits all indebtedness owed to a parent, subsidiary or affiliated corporation as a part of its capital used in its business and as a part of the base for franchise tax under this section. The term "indebtedness" as used in this paragraph includes all loans, credits, goods, supplies, or other capital of whatsoever nature furnished by a parent, subsidiary, or affiliated corporation, other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations. The terms "parent," "subsidiary," and "affiliate" as used in this paragraph shall have the meaning specified in G.S. 105-130.6. If any part of the capital of the creditor corporation is capital borrowed from a source other than a parent, subsidiary or affiliate, the debtor corporation, which is required under this paragraph to include in its tax base the amount of debt by reason of being a parent, subsidiary, or affiliate of the said creditor corporation, may deduct from the debt thus included a proportionate part determined on the basis of the ratio of such borrowed capital as above specified of the creditor corporation to the total assets of the said creditor corporation. Further, in case the creditor corporation as above specified is also taxable under the provisions of this section, such creditor corporation shall be allowed to deduct from the total of its capital, surplus and undivided profits the amount of any debt owed to it by a parent, subsidiary or affiliated corporation to the extent that such debt has been included in the tax base of said parent, subsidiary or affiliated debtor corporation reporting for taxation under the provisions of this section.

(c)(1) After ascertaining and determining the amount of its capital stock, surplus and undivided profits, as provided herein, every corporation permitted to allocate and apportion its net income for income tax purposes under the provisions of Article 4 of this Chapter shall apportion said capital stock, surplus and undivided profits to this State through use of the fraction computed for apportionment of its business income under said Article.

Provided, that although a corporation is authorized by the Tax Review Board to apportion its business income by use of an alternative formula or method, the corporation may not use such alternative formula or method for apportioning its capital stock, surplus and undivided profits unless specifically authorized to do so by order of the Tax Review Board.

Provided, further, that a corporation which is required to pay an income tax to this State on its entire net income shall apportion its entire capital stock, surplus and undivided profits to this State.

(2) If any corporation believes that the method of allocation or apportionment hereinbefore described as administered by the Secretary has operated or will so operate as to subject it to taxation on a greater portion of its capital stock, surplus and undivided profits than is reasonably attributable to business within the State, it may file with the Tax Review

Board a petition setting forth the facts upon which its belief is based and its argument with respect to the application of the allocation formula. This petition shall be filed in such form and within such time as the Tax Review Board may prescribe. The Board shall grant a hearing on the petition. The time limitations set in G.S. 105-241.2 for the date of the hearing, notification to the taxpayer, and a decision following the hearing apply to a hearing held pursuant to this subdivision.

At least three members of the Tax Review Board shall attend any hearing pursuant to such petition. In such cases the Tax Review Board's membership shall be augmented by the addition of the Secretary, who shall sit as a member of the Board with full power to participate in its deliberations and decisions with respect to petitions filed under the provisions of this section. An informal record containing in substance the evidence, contentions and arguments presented at the hearing shall be made. All members of the augmented Tax Review Board shall consider such evidence, contentions and arguments, and the decision thereon shall be made by a majority vote of the augmented Board.

If the corporation employs in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the applicable allocation formula or alternative formulas prescribed by this section the portion of the capital stock, surplus and undivided profits attributable to the business within this State, application for permission to base the return upon the taxpayer's books of account shall be considered by the Tax Review Board. The Board may permit such separate accounting method in lieu of applying the applicable allocation formula if the Board finds that method best reflects the portion of the capital stock, surplus and undivided profits attributable to this State.

If the corporation shows that any other method of allocation than the applicable allocation formula or alternative formulas prescribed by this section reflects more clearly the portion of the capital stock, surplus and undivided profits attributable to the business within this State, application for permission to base the return upon such other method shall be considered by the Tax Review Board. The application shall be accompanied by a statement setting forth in detail, with full explanations, the method the taxpayer believes will more nearly reflect the portion of its capital stock, surplus and undivided profits attributable to the business within this State. If the Board concludes that the allocation formula and the alternative formulas prescribed by this section allocate to this State a greater portion of the capital stock, surplus and undivided profits of the corporation than is reasonably attributable to business within this State, it shall determine the allocable portion by such other method as it finds best calculated to assign to this State for taxation the portion reasonably attributable to its business within this State.

There shall be a presumption that the appropriate allocation formula reasonably attributes to this State the

portion of the corporation's capital stock, surplus and undivided profits reasonably attributable to its business in this State and the burden shall rest upon the corporation to show the contrary. The relief herein authorized shall be granted by the Board only in cases of clear, cogent and convincing proof that the petitioning taxpayer is entitled thereto. No corporation shall use any alternative formula or method other than the applicable allocation formula provided by statute in making a franchise tax report or return to this State except upon order in writing of the Board and any return in which any alternative formula or other method other than the applicable allocation formula prescribed by statute is used without the permission of the Board, shall not be a lawful return.

When the Board determines, pursuant to the provisions of this Article, that an alternative formula or other method more accurately reflects the portion of the capital stock, surplus and undivided profits allocable to North Carolina and renders its decision with regard thereto, the corporation shall allocate its capital stock, surplus and undivided profits for future years in accordance with such determination and decision of the Board so long as the conditions constituting the basis upon which the decision was made remain unchanged or until such time as the business method of operation of the corporation changes. Provided, however, that the Secretary may, with respect to any subsequent year, require the corporation to furnish information relating to its property, operations and activities.

A corporation which proposes to do business in this State may file a petition with the Board setting forth the facts upon which it contends that the applicable allocation formula will allocate a greater portion of the corporation's capital stock, surplus and undivided profits to North Carolina than will be reasonably attributable to its proposed business within the State. Upon a proper showing in accordance with the procedure described above for determination by the Board, the Board may authorize such corporation to allocate its capital stock, surplus and undivided profits to North Carolina on the basis prescribed by the Board under the provisions of this section for such future years as the conditions constituting the basis upon which the Board's decision is made remain unchanged and the business operations of the corporation continue to conform to the statement of proposed methods of business operations presented by the corporation to the Board.

When the Secretary asserts liability under the formula adjustment decision of the Tax Review Board, an aggrieved taxpayer may pay the tax under protest and bring a civil action for recovery under the provisions of G.S. 105-241.4.

- (3) The proportion of the total capital stock, surplus and undivided profits of each such corporation so allocated shall be deemed to be the proportion of the total capital stock, surplus and undivided profits of each such corporation used in connection with its business in this State and liable for annual franchise tax under the provisions of this section.
- (d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this

section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents (\$1.50) per one thousand dollars (\$1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars (\$35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. The term "total actual investment in tangible property" as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing "total actual investment in tangible personal property" there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment, Health, and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution

resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter.

(e) Any corporation which changes its income year, and files a "short period" income tax return pursuant to G.S. 105-130.15 shall file a franchise tax return in accordance with the provisions of this section in the manner and as of the date specified in subsection (a) of this section. Such corporation shall be entitled to deduct from the total franchise tax computed (on an annual basis) on such return the amount of franchise tax previously paid which is applicable to the period subsequent to the beginning of the new income year.

(f) The report, statement and tax required by this section shall be in addition to all other reports required or taxes levied and assessed in this State.

(g) Counties, cities and towns shall not levy a franchise tax on corporations taxed under this section.

(h) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1211, s. 5. (1939, c. 158, s. 210; 1941, c. 50, s. 4; 1943, c. 400, s. 3; 1945, c. 708, s. 3; 1947, c. 501, s. 3; 1951, c. 643, s. 3; 1953, c. 1302, s. 3; 1955, c. 1100, s. 2½; c. 1350, s. 17; 1957, c. 1340, s. 3; 1959, c. 1259, s. 3; 1963, c. 1169, s. 1; 1967, c. 286; c. 892, ss. 10, 11; c. 1110, s. 2; 1973, c. 476, s. 193; c. 695, s. 17; c. 1262, s. 23; c. 1287, s. 3; 1975, c. 764, s. 2; 1977, c. 771, s. 4; 1981, c. 704, s. 18; c. 855, s. 3; 1981 (Reg. Sess., 1982), c. 1211, s. 5; 1985, c. 656, s. 40; 1985 (Reg. Sess., 1986), c. 826, s. 6; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 882, s. 4.3; 1989, c. 148, s. 1; c. 727, ss. 218(39), 219(27); 1991, c. 30, s. 5; 1993, c. 532, s. 11; 1995 (Reg. Sess., 1996), c. 560, s. 1.)

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective for taxable years beginning on or after October 1, 1996, in the second paragraph of subsection (b), deleted "or endorsed or guaranteed by" preceding "a parent, subsidiary or affili-

ated corporation" from the first sentence, in the second sentence substituted "includes" for "shall include", added "other than indebtedness endorsed, guaranteed, or otherwise supported by one of these corporations" at the end, and made a punctuation change.

ARTICLE 3A.

Tax Incentives for New and Expanding Businesses.

[Repealed effective January 1, 2002]

§ 105-129.2. (Repealed effective January 1, 2002 — see note) Definitions.

The following definitions apply in this Article:

(1) Cost. — Defined in section 179 of the Code.

Article 3A has a delayed repeal date. See notes.

- (2) Data processing. — Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.
- (3) Enterprise tier. — The classification assigned to an area pursuant to G.S. 105-129.3.
- (4) Full-time job. — A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.
- (5) Machinery and equipment. — Engines, machinery, tools, and implements that are capitalized by the taxpayer for tax purposes under the Code and are used or designed to be used in manufacturing or processing, warehousing and distribution, or data processing. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.
- (6) Manufacturing and processing. — Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.
- (7) Purchase. — Defined in section 179 of the Code.
- (8) Warehousing and distribution. — Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census. (1996, 2nd Ex. Sess., c. 13, s. 3.3.)

Article Repealed Effective January 1, 2002. — This Article is repealed, effective for applications for credits filed under § 105-129.6 on or after January 1, 2002, by Session Laws 1996, Second Extra Session, c. 13, s. 10.2(3).

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 3.11, effective for taxable years beginning on or after January 1, 1996, and applicable to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996, provides that, notwithstanding the provisions of this section, if a taxpayer relocates an employee to this State during 1996, any in-house research expenses the taxpayer incurs with respect to that employee during 1996, either before or after relocation, are considered in-house research expenses in this State for purposes of this section, and further provides that if the federal tax credit for increasing research activities that was formerly allowed under section 41 of the Code is reenacted, the credit for research and development allowed in Article 3A of this Chapter becomes effective for the same taxable year for which the reen-

acted federal credit becomes effective.

Session Laws 1996, Second Extra Session, c. 13, s. 10.2(3), made this Article effective for taxable years beginning on or after January 1, 1996, and applicable to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996, except for G.S. 105-129.11, which is effective for taxable years beginning on or after January 1, 1997, and applicable to training expenditures made on or after July 1, 1997.

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Article 3A has a delayed repeal date. See notes.

**§ 105-129.3. (Repealed effective January 1, 2002)
Enterprise tier designation.**

(a) **Tiers Defined.** — An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) **Annual Designation.** — Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

- (1) The county's rank in a ranking of counties by rate of unemployment from lowest to highest.
- (2) The county's rank in a ranking of counties by per capita income from highest to lowest.
- (3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer. (1996, 2nd Ex. Sess., c. 13, s. 3.3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of

the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

**§ 105-129.4. (Repealed effective January 1, 2002)
Eligibility; forfeiture.**

(a) **Type of Business.** — A taxpayer is eligible for a credit allowed by this Article if the taxpayer engages in manufacturing or processing, warehousing or distributing, or data processing, and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business.

(b) **Wage Standard.** — A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which

Article 3A has a delayed repeal date. See notes.

the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment or the credit for research and development if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least ten percent (10%) above the average weekly wage paid in the county in which the jobs will be located. In calculating the average weekly wage of jobs, positions that pay a wage or salary at a rate that exceeds one hundred thousand dollars (\$100,000) a year shall be excluded. For the purpose of this subsection, the average wage in a county is the average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data are available.

(c) Worker Training. — A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.

The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.

(d) Forfeiture. — A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days

Article 3A has a delayed repeal date. See notes.

after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. — The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. (1996, 2nd Ex. Sess., c. 13, s. 3.3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of

the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

**§ 105-129.5. (Repealed effective January 1, 2002)
Tax election; cap.**

(a) Tax Election. — The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the application for the credit. This election is binding. Any carryforwards of the credit must be claimed against the same tax elected in the application.

(b) Cap. — The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years. (1996, 2nd Ex. Sess., c. 13, s. 3.3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of

the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Article 3A has a delayed repeal date. See notes.

**§ 105-129.6. (Repealed effective January 1, 2002)
Application; reports.**

(a) Application. — To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce, must specify the credit and the tax against which it will be claimed, and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, specifying the tax against which the credit will be claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(b) Reports. — The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number of applications for each credit allowed in this Article.
- (2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
- (3) The cost of machinery and equipment with respect to which credits were applied for. (1996, 2nd Ex. Sess., c. 13, s. 3.3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 10.2(3) provides: "Article 3A of Chapter 105 of the General Statutes is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2002."

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

**§ 105-129.7. (Repealed effective January 1, 2002)
Substantiation.**

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue.

Article 3A has a delayed repeal date. See notes.

Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection. (1996, 2nd Ex. Sess., c. 13, s. 3.3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of

the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§ 105-129.8. (Repealed effective January 1, 2002)
Credit for creating jobs.

(a) Credit. — A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located:

<i>Area Enterprise Tier</i>	<i>Amount of Credit</i>
Tier One	\$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues,

Article 3A has a delayed repeal date. See notes.

the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) **Planned Expansion.** — A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996. (1987, c. 568, ss. 1, 2; 1989, c. 111, ss. 1, 2; c. 751, ss. 7(6), 7(7), 8(10), 8(11); c. 753, s. 4.1(a)-(d); 1989 (Reg. Sess., 1990), c. 814, s. 14; 1991, c. 517, ss. 1-3; 1991 (Reg. Sess., 1992), c. 959, ss. 20, 21; 1993, c. 45, ss. 1, 2; c. 485, ss. 7, 11; 1995, c. 370, ss. 5, 6; 1996, 2nd Ex. Sess., c. 13, ss. 3.2-3.4.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would

otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. —

Session Laws 1996, Second Extra Session, c. 13, ss. 3.2 to 3.4, effective for taxable years beginning on or after January 1, 1996, and applicable to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996, recodified former G.S. 105-130.40 and former G.S. 105-151.17 as this section, and rewrote the section.

§ 105-129.9. (Repealed effective January 1, 2002) Credit for investing in machinery and equipment.

(a) **Credit.** — A taxpayer that has purchased machinery and equipment and places it in service in this State during the taxable year is allowed a credit equal to seven percent (7%) of the excess of

Article 3A has a delayed repeal date. See notes.

the eligible investment amount over the applicable threshold. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) **Eligible Investment Amount.** — The eligible investment amount is the lesser of (i) the cost of the machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most machinery and equipment in service in this State.

(c) **Threshold.** — The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the machinery and equipment are placed in service during the taxable year. If the taxpayer places machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the machinery and equipment placed in service in each area.

<i>Area Enterprise Tier</i>	<i>Threshold</i>
Tier One	\$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) **Expiration.** — If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are sold or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved. (1996, 2nd Ex. Sess., c. 13, s. 3.3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of

the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Article 3A has a delayed repeal date. See notes.

**§ 105-129.10. (Repealed effective January 1, 2002)
Credit for research and development.**

A taxpayer that claims for the taxable year a federal income tax credit under section 41 of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. As used in this section, the terms "qualified research expenses" and "base amount" have the meaning provided in section 41 of the Code. (1996, 2nd Ex. Sess., c. 13, s. 3.3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 3.11, effective for taxable years beginning on or after January 1, 1996, and applicable to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996, provides that, notwithstanding the provisions of this section, if a taxpayer relocates an employee to this State during 1996, any in-house research expenses the taxpayer incurs with respect to that employee during 1996, either before or after relocation, are considered in-house research expenses in this State for purposes of this section, and further provides that if the federal tax credit for increasing research activities that was formerly allowed under section 41 of the Code is reenacted, the credit for research and development

allowed in Article 3A of this Chapter becomes effective for the same taxable year for which the reenacted federal credit becomes effective.

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

**§ 105-129.11. (Repealed effective January 1, 2002)
Credit for worker training.**

(a) Credit. — A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to fifty percent (50%) of its eligible expenditures for the training. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars (\$1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars (\$500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. — The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4. (1996, 2nd Ex. Sess., c. 13, s. 3.3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 10.2(3), made this section effective for taxable years beginning on or after January 1, 1997, and applicable to training expenditures made on or after July 1, 1997.

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§§ 105-129.12 through 105-129.14: Reserved for future codification purposes.

ARTICLE 3B.

Business Tax Credit.

[Repealed effective January 1, 2002]

§ 105-129.15. (Repealed effective January 1, 2002) Definitions.

The following definitions apply in this Article:

- (1) **Business property.** — Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code. The term does not include, however, a luxury passenger automobile taxable under section 4001 of the Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.
- (2) **Cost.** — Defined in section 179 of the Code.
- (3) **Purchase.** — Defined in section 179 of the Code. (1996, 2nd Ex. Sess., c. 13, s. 3.12.)

Article Repealed Effective January 1, 2002. — This article is repealed, effective January 1, 2002, by Session Laws 1996, Second Extra Session, c. 13, s. 10.2(3).

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 10.2(3), made this Article effective for taxable years beginning on or after January 1, 1996, and applicable to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996.

Session Laws 1996, Second Extra Session, c. 13, s. 10.2(3) provides in part: "Article 3B of Chapter 105 of the General Statutes is repealed effective for business property placed in service on or

after January 1, 2002."

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Article 3B has a delayed repeal date. See notes.

**§ 105-129.16. (Repealed effective January 1, 2002)
Credit for investing in business property.**

(a) Credit. — A taxpayer that has purchased business property and places it in service in this State during the taxable year is allowed a credit equal to four and one-half percent (4.5%) of the cost of the property. The maximum credit allowed a taxpayer for property placed in service during a taxable year is four thousand five hundred dollars (\$4,500). The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. — If, in one of the five years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is sold or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(c) No Double Credit. — A taxpayer that claims the credit allowed under Article 3A of this Chapter with respect to business property may not take the credit allowed in this section with respect to the same property. (1996, 2nd Ex. Sess., c. 13, s. 3.12.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of

the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

**§ 105-129.17. (Repealed effective January 1, 2002)
Tax election; cap.**

(a) Tax Election. — The credit allowed in this Article is allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. — The credit allowed in this Article may not exceed fifty percent (50%) of the tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years. (1996, 2nd Ex. Sess., c. 13, s. 3.12.)

Article 3B has a delayed repeal date. See notes.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of

the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§ 105-129.18. (Repealed effective January 1, 2002) Substantiation.

To claim the credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection. (1996, 2nd Ex. Sess., c. 13, s. 3.12.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of

the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§ 105-129.19. (Repealed effective January 1, 2002) Reports.

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number of taxpayers that claimed the credit allowed in this Article.
 - (2) The cost of business property with respect to which credits were claimed.
 - (3) The total cost to the General Fund of the credits claimed.
- (1996, 2nd Ex. Sess., c. 13, s. 3.12.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of

the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§§ 105-129.20 through 105-129.24: Reserved for future codification purposes.

ARTICLE 4.

Schedule D. Income Tax.

DIVISION I. CORPORATION INCOME TAX.

§ 105-130.3. Corporations.

A tax is imposed on the State net income of every C Corporation doing business in this State. An S Corporation is not subject to the tax levied in this section. The tax is a percentage of the taxpayer's State net income computed as follows:

<i>Income Years Beginning</i>	<i>Tax</i>
In 1997	7.5%
In 1998	7.25%
In 1999	7%
After 1999	6.9%.

(1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 1287, s. 4; 1975, c. 275, s. 4; 1977, c. 657, s. 4; 1979, c. 179, s. 2; 1981, c. 15; 1983, c. 713, s. 69; 1987, c. 622, s. 8; 1987 (Reg. Sess., 1988), c. 1089, s. 5; 1989, c. 728, s. 1.33; 1991, c. 689, s. 258; 1996, 2nd Ex. Sess., c. 13, s. 2.1.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to

any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective for taxable years beginning on or after January 1, 1997, deleted "at seven and seventy-five one-hundredths percent (7.75%) of the corporation's State net income" in the first sentence, and added the third sentence and table.

§ 105-130.4. Allocation and apportionment of income for corporations.

(a) As used in this section, unless the context otherwise requires:

- (1) "Business income" means income arising from transactions and activity in the regular course of the corporation's trade or business and includes income from tangible and intangible property if the acquisition, management, and/or disposition of the property constitute integral parts of the corporation's regular trade or business operations.
- (2) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
- (3) "Compensation" means wages, salaries, commissions and

any other form of remuneration paid to employees for personal services.

- (4) "Excluded corporation" means any corporation engaged in business as a building or construction contractor, a securities dealer, a loan company or a corporation which receives more than fifty percent (50%) of its ordinary gross income from investments in and/or dealing in intangible property.
- (5) "Nonbusiness income" means all income other than business income.
- (6) "Public utility" means any corporation that is subject to control of one of more of the following entities: the North Carolina Utilities Commission, the Federal Communications Commission, the Interstate Commerce Commission, the Federal Power Commission, or the Federal Aviation Agency; and that owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, the transportation of goods or persons, or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam, oil, oil products, or gas. The term also includes a motor carrier of property whose principal business activity is transporting property by motor vehicle for hire over the public highways of this State.
- (7) "Sales" means all gross receipts of the corporation except receipts from any casual sale of property and except receipts allocated under subsections (c) through (h) of this section.
- (8) "Casual sale of property" means the sale of any property which was not purchased, produced or acquired primarily for sale in the corporation's regular trade or business.
- (9) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(b) A corporation having income from business activity which is taxable both within and without this State shall allocate and apportion its net income or net loss as provided in this section. For purposes of allocation and apportionment, a corporation is taxable in another state if (i) the corporation's business activity in that state subjects it to a net income tax or a tax measured by net income, or (ii) that state has jurisdiction based on the corporation's business activity in that state to subject the corporation to a tax measured by net income regardless whether that state exercises its jurisdiction. For purposes of this section, "business activity" includes any activity by a corporation that would establish a taxable nexus pursuant to 15 United States Code section 381.

(c) Rents and royalties from real or tangible personal property, gains and losses, interest, dividends less the portion deductible under G.S. 105-130.7, patent and copyright royalties and other kinds of income, to the extent that they constitute nonbusiness income, less related expenses shall be allocated as provided in subsections (d) through (h) of this section.

(d)(1) Net rents and royalties from real property located in this State are allocable to this State.

(2) Net rents and royalties from tangible personal property are allocable to this State:

- a. If and to the extent that the property is utilized in this State, or

- b. In their entirety if the corporation's commercial domicile is in this State and the corporation is not organized under the laws of, or is not taxable in, the state in which the property is utilized.
- (3) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the income year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the income year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the corporation, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.
- (e)(1) Gains and losses from sales or other disposition of real property located in this State are allocable to this State.
- (2) Gains and losses from sales or other disposition of tangible personal property are allocable to this State if
 - a. The property had a situs in this State at the time of the sale, or
 - b. The corporation's commercial domicile is in this State and the corporation is not taxable in the state in which the property has a situs.
- (3) Gains and losses from sales or other disposition of intangible personal property are allocable to this State if the corporation's commercial domicile is in this State.
- (f) Interest and net dividends are allocable to this State if the corporation's commercial domicile is in this State. For purposes of this section, the term "net dividends" means gross dividend income received less related expenses and less that portion of the dividends deductible under G.S. 105-130.7.
- (g)(1) Royalties or similar income received from the use of patents, copyrights, secret processes and other similar intangible property are allocable to this State:
 - a. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in this State, or
 - b. If and to the extent that the patent, copyright, secret process or other similar intangible property is utilized in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this State.
- (2) A patent, secret process or other similar intangible property is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, processing, or other use in the state or to the extent that a patented product is produced in the state. If the basis of receipts from such intangible property does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the intangible property is utilized in the state in which the taxpayer's commercial domicile is located.
- (3) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of

receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(h) The income less related expenses from any other nonbusiness activities or investments not otherwise specified in this section is allocable to this State if the business situs of the activities or investments are located in this State.

(i) All business income of corporations other than public utilities and excluded corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four. Provided, that where the sales factor does not exist, the denominator of the fraction shall be the number of existing factors and where the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction shall be the number of existing factors plus one.

(j)(1) The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in this State during the income year and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the income year.

(2) Property owned by the corporation is valued at its original cost. Property rented by the corporation is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the corporation less any annual rental rate received by the corporation from subrentals except that subrentals shall not be deducted when they constitute business income. Any property under construction and any property the income from which constitutes nonbusiness income shall be excluded in the computation of the property factor.

(3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation which ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a merger or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property.

(k)(1) The payroll factor is a fraction, the numerator of which is the total amount paid in this State during the income year by the corporation as compensation, and the denominator of which is the total compensation paid everywhere during

the income year. All compensation paid to general executive officers and all compensation paid in connection with nonbusiness income shall be excluded in computing the payroll factor. General executive officers shall include the chairman of the board, president, vice-presidents, secretary, treasurer, comptroller, and any other officers serving in similar capacities.

- (2) Compensation is paid in this State if:
- a. The individual's service is performed entirely within the State; or
 - b. The individual's service is performed both within and without the State, but the service performed without the State is incidental to the individual's service within the State; or
 - c. Some of the service is performed in this State and (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this State, or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this State.

(l)(1) The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year, and the denominator of which is the total sales of the corporation everywhere during the income year. Notwithstanding any other provision under this Division, the receipts from any casual sale of property shall be excluded from both the numerator and the denominator of the sales factor. Where a corporation is not taxable in another state on its business income but is taxable in another state only because of nonbusiness income, all sales shall be treated as having been made in this State.

(2) Sales of tangible personal property are in this State if the property is received in this State by the purchaser. In the case of delivery of goods by common carrier or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. Direct delivery into this State by the taxpayer to a person or firm designated by a purchaser from within or without the State shall constitute delivery to the purchaser in this State.

- (3) Other sales are in this State if:
- a. The receipts are from real or tangible personal property located in this State; or
 - b. The receipts are from intangible property and are received from sources within this State; or
 - c. The receipts are from services and the income-producing activities are in this State.

(m) All business income of a railroad company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the "railway operating revenue" from business done within this State and the denominator of which is the "total railway operating revenue" from all business done by the

company as shown by its records kept in accordance with the standard classification of accounts prescribed by the Interstate Commerce Commission.

“Railway operating revenue” from business done within this State shall mean “railway operating revenue” from business wholly within this State, plus the equal mileage proportion within this State of each item of “railway operating revenue” received from the interstate business of the company. “Equal mileage proportion” shall mean the proportion which the distance of movement of property and passengers over lines in this State bears to the total distance of movement of property and passengers over lines of the company receiving such revenue. “Interstate business” shall mean “railway operating revenue” from the interstate transportation of persons or property into, out of, or through this State. If the Secretary of Revenue shall find, with respect to any particular company, that its accounting records are not kept so as to reflect with exact accuracy such division of revenue by State lines as to each transaction involving interstate revenue, the Secretary of Revenue may adopt such regulations, based upon averages, as will approximate with reasonable accuracy the proportion of interstate revenue actually earned upon lines in this State. Provided, that where a railroad is being operated by a partnership which is treated as a corporation for income tax purposes and pays a net income tax to this State, or if located in another state would be so treated and so pay as if located in this State, each partner’s share of the net profits shall be considered as dividends paid by a corporation for purposes of this Division and shall be so treated for inclusion in gross income, deductibility, and separate allocation of dividend income.

(n) All business income of a telephone company shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is gross operating revenue from local service in this State plus gross operating revenue from toll services performed wholly within this State plus the proportion of revenue from interstate toll services attributable to this State as shown by the records of the company plus the gross operating revenue in North Carolina from other service less the uncollectible revenue in this State, and the denominator of which is the total gross operating revenue from all business done by the company everywhere less total uncollectible revenue. Provided, that where a telephone company is required to keep its records in accordance with the standard classification of accounts prescribed by the Federal Communications Commission the amounts in such accounts shall be used in computing the apportionment fraction as provided in this subsection.

(o) All business income of a motor carrier of property shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words “vehicle miles” shall mean miles traveled by vehicles owned or operated by the company hauling property for a charge or traveling on a scheduled route.

(p) All business income of a motor carrier of passengers shall be apportioned by multiplying the income by a fraction, the numerator of which is the number of vehicle miles in this State and the denominator of which is the total number of vehicle miles of the company everywhere. The words “vehicle miles” shall mean miles traveled by vehicles owned or operated by the company carrying passengers for a fare or traveling on a scheduled route.

(q) All business income of a telegraph company shall be apportioned by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

The property factor shall be as defined in subsection (j) of this section, the payroll factor shall be as defined in subsection (k) of this section, and the sales factor shall be as defined in subsection (l) of this section.

(r) All business income of an excluded corporation and of all other public utilities shall be apportioned by multiplying the income by the sales factor as determined under subsection (l) of this section.

(s) All business income of an air or water transportation corporation shall be apportioned by a fraction, the numerator of which is the corporation's revenue ton miles in this State and the denominator of which is the corporation's revenue ton miles everywhere. The term "revenue ton mile" means one ton of passengers, freight, mail, or other cargo carried one mile. In making this computation, a passenger is considered to weigh two hundred pounds.

(t)(1) If any corporation believes that the method of allocation or apportionment as administered by the Secretary has operated or will so operate as to subject it to taxation on a greater portion of its income than is reasonably attributable to business or earnings within the State, it may file with the Tax Review Board a petition setting forth the facts upon which its belief is based and its argument with respect to the application of the allocation formula. This petition shall be filed in such form and within such time as the Tax Review Board may prescribe. The Board shall grant a hearing on the petition. The time limitations set in G.S. 105-241.2 for the date of the hearing, notification to the taxpayer, and a decision following the hearing apply to a hearing held pursuant to this subsection. At least three members of the Tax Review Board shall attend any hearing pursuant to such petition. In such cases, the Tax Review Board's membership shall be augmented by the addition of the Secretary, who shall sit as a member of the Board with full power to participate in its deliberations and decisions with respect to petitions filed under the provisions of this subsection. An informal record containing in substance the evidence, contentions and arguments presented at the hearing shall be made. All members of the augmented Tax Review Board shall consider such evidence, contentions and arguments and the decisions thereon shall be made by a majority vote of the augmented Board.

(2) If the corporation employs in its books of account a detailed allocation of receipts and expenditures which reflects more clearly than the applicable allocation formula prescribed by this section the income attributable to the business within this State, application for permission to base the return upon the taxpayer's books of account shall be considered by the Tax Review Board. The Board may permit such separate accounting method in lieu of applying the applicable allocation formula if the Board finds that method best reflects the income and earnings attributable to this State.

(3) If the corporation shows that any other method of allocation than the applicable allocation formula prescribed by this

section reflects more clearly the income attributable to the business within this State, application for permission to base the return upon such other method shall be considered by the Tax Review Board. The application shall be accompanied by a statement setting forth in detail, with full explanations, the method the corporation believes will more nearly reflect its income from business within this State. If the Board concludes that the allocation formula prescribed by this section allocates to this State a greater portion of the net income of the corporation than is reasonably attributable to business or earnings within this State, it shall determine the allocable net income by such other method as it finds best calculated to assign to this State for taxation the portion of the corporation's net income reasonably attributable to its business or earnings within this State.

- (4) There shall be a presumption that the appropriate allocation formula reasonably attributes to this State the portion of the corporation's income earned in this State, and the burden shall rest upon the corporation to show the contrary. The relief herein authorized shall be granted by the Board only in cases of clear, cogent and convincing proof that the petitioning corporation is entitled thereto. No corporation shall use any alternative formula or method other than the applicable allocation formula provided by statute in making a report or return of its income to this State except upon order in writing of the Board, and any return in which any alternative formula or other method, other than the applicable allocation formula prescribed by statute, is used without permission of the Board shall not be a lawful return.

When the Board determines, pursuant to the provisions of this subsection, that an alternative formula or other method more accurately reflects the income allocable to North Carolina and renders its decision with regard thereto, the corporation shall allocate its net income for future years in accordance with such determination and decision of the Board so long as the conditions constituting the basis upon which the decision was made remain unchanged or until such time as the business method of operation of the corporation changes. Provided, however, that the Secretary may, with respect to any subsequent year, require the corporation to furnish information relating to its property, operations, and activities.

- (5) A corporation which proposes to do business in this State may file a petition with the Board setting forth the facts upon which it contends that the applicable allocation formula will allocate a greater portion of the corporation's future income to North Carolina than will be reasonably attributable to its proposed business or contemplated earnings within the State. Upon a proper showing in accordance with the procedure described above for determinations by the Board, the Board may authorize such corporation to allocate income from its future business to North Carolina on the basis prescribed by the Board under the provisions of this section for such future years if the conditions consti-

tuting the basis upon which the Board's decision is made remain unchanged and the business operations of the corporation continue to conform to the statement of proposed methods of business operation presented by the corporation to the Board.

- (6) When the Secretary asserts liability under the formula adjustment decision of the Tax Review Board, an aggrieved corporation may pay the tax and bring a civil action for recovery under the provisions of Article 9. (1939, c. 158, s. 311; 1941, c. 50, s. 5; 1943, c. 400, s. 4; 1945, c. 752, s. 3; 1953, c. 1302, s. 4; 1955, c. 1350, s. 18; 1957, c. 1340, s. 4; 1959, c. 1259, s. 4; 1963, c. 1169, s. 2; c. 1186; 1967, c. 1110, s. 3; 1973, c. 476, s. 193; c. 1287, s. 4; 1981 (Reg. Sess., 1982), c. 1212; 1987, c. 804, s. 2; 1987 (Reg. Sess., 1988), c. 994, s. 1; 1993, c. 532, s. 12; 1995, c. 350, s. 3; 1996, 2nd Ex. Sess., c. 14, s. 5.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective for taxable years beginning on or after January 1, 1996, rewrote subsection (f).

§ 105-130.5. Adjustments to federal taxable income in determining State net income.

(a) The following additions to federal taxable income shall be made in determining State net income:

- (1) Taxes based on or measured by net income by whatever name called and excess profits taxes;
- (2) Interest paid in connection with income exempt from taxation under this Division;
- (3) The contributions deduction allowed by the Code;
- (4) Interest income earned on bonds and other obligations of other states or their political subdivisions, less allowable amortization on any bond acquired on or after January 1, 1963;
- (5) The amount by which gains have been offset by the capital loss carryover allowed under the Code. All gains recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition;
- (6) The net operating loss deduction allowed by the Code; and
- (7) Special deductions allowable under sections 241 to 247, inclusive, of the Code.
- (8) Repealed by Session Laws 1987, c. 778, s. 2.
- (9) Payments to or charges by a parent, subsidiary or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever pursuant to the Revenue Laws of this State.
- (10) The total amounts allowed under this Article during the taxable year as a credit against the taxpayer's income tax.

A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this Article the apportionment factor used by it in determining the amount of its apportioned income.

- (11) The amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for mines, oil and gas wells, and other natural deposits exceeds the cost depletion allowance for these items under the Code, except as otherwise provided herein. This subdivision does not apply to depletion deductions for clay, gravel, phosphate rock, lime, shells, stone, sand, feldspar, gemstones, mica, talc, lithium compounds, tungsten, coal, peat, olivine, pyrophyllite, and other solid minerals or rare earths extracted from the soil or waters of this State. Corporations required to apportion income to North Carolina shall first add to federal taxable income the amount of all percentage depletion in excess of cost depletion that was subtracted from the corporation's gross income in computing its federal income taxes and shall then subtract from the taxable income apportioned to North Carolina the amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for solid minerals or rare earths extracted from the soil or waters of this State exceeds the cost depletion allowance for these items.
 - (12) The amount allowed under the Code for depreciation or as an expense in lieu of depreciation for a utility plant acquired by a natural gas local distribution company, to the extent the plant is included in the company's rate base at zero cost in accordance with G.S. 62-158.
 - (13) The amount of income the Code allowed the taxpayer to exclude because the income was attributed under section 925 of the Code to a foreign sales corporation, to the extent the Code required the amount to be included in the federal taxable income of the foreign sales corporation to which it was attributed.
- (b) The following deductions from federal taxable income shall be made in determining State net income:
- (1) Interest upon the obligations of the United States or its possessions, to the extent included in federal taxable income: Provided, interest upon the obligations of the United States shall not be an allowable deduction unless interest upon obligations of the State of North Carolina or any of its political subdivisions is exempt from income taxes imposed by the United States.
 - (2) Payments received from a parent, subsidiary or affiliated corporation in excess of fair compensation in intercompany transactions which in the determination of the net income or net loss of such corporation were not allowed as a deduction under the Revenue Laws of this State.
 - (3) The deductible portion of dividends from stock as provided under G.S. 105-130.7.
 - (4) Losses in the nature of net economic losses sustained by the corporation in any or all of the five preceding years pursu-

ant to the provisions of G.S. 105-130.8. Provided, a corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8.

(5) Contributions or gifts made by any corporation within the income year to the extent provided under G.S. 105-130.9.

(6) Amortization in excess of depreciation allowed under the Code on the cost of any sewage or waste treatment plant, and facilities or equipment used for purposes of recycling or resource recovery of or from solid waste, or for purposes of reducing the volume of hazardous waste generated as provided in G.S. 105-130.10.

(7) Depreciation of emergency facilities acquired prior to January 1, 1955. Any corporation shall be permitted to depreciate any emergency facility, as such is defined in section 168 of the Code, over its useful life, provided such facility was acquired prior to January 1, 1955, and no amortization has been claimed on such facility for State income tax purposes.

(8) The amount of losses realized on the sale or other disposition of assets not allowed under section 1211(a) of the Code. All losses recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition.

(9) With respect to a shareholder of a regulated investment company, the portion of undistributed capital gains of such regulated investment company included in such shareholder's federal taxable income and on which the federal tax paid by the regulated investment company is allowed as a credit or refund to the shareholder under section 852 of the Code.

(10) Repealed by Session Laws 1987, c. 778, s. 2.

(11) If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed.

(12) Reasonable expenses, in excess of deductions allowed under the Code, paid for reforestation and cultivation of commercially grown trees; provided, that this deduction shall be allowed only to those corporations in which the real owners of all the shares of such corporation are natural persons actively engaged in the commercial growing of trees, or the spouse, siblings, or parents of such persons. Provided, further, that in no case shall a corporation be allowed a deduction for the same reforestation or cultivation expenditure more than once.

(13) The eligible income of an international banking facility to the extent included in determining federal taxable income, determined as follows:

a. "International banking facility" shall have the same meaning as is set forth in the laws of the United States or regulations of the board of governors of the federal reserve system.

b. The eligible income of an international banking facility for the taxable year shall be an amount obtained by multiplying State taxable income as determined under G.S. 105-130.3 (determined without regard to eligible income of an international banking facility and allocation and apportionment, if applicable) for such year by a fraction, the denominator of which shall be the gross receipts for such year derived by the bank from all sources, and the numerator of which shall be the adjusted gross receipts for such year derived by the international banking facility from:

1. Making, arranging for, placing or servicing loans to foreign persons substantially all the proceeds of which are for use outside the United States;
2. Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities; or
3. Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph.

c. The adjusted gross receipts shall be determined by multiplying the gross receipts of the international banking facility by a fraction the numerator of which is the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States and the denominator of which is the average amount for the taxable year of all assets of the international banking facility.

d. For the purposes of this subsection the term "foreign person" means:

1. An individual who is not a resident of the United States;
2. A foreign corporation, a foreign partnership or a foreign trust, as defined in section 7701 of the Code, other than a domestic branch thereof;
3. A foreign branch of a domestic corporation (including the taxpayer);
4. A foreign government or an international organization or an agency of either, or
5. An international banking facility.

For purposes of this paragraph, the terms "foreign" and "domestic" shall have the same meaning as set forth in section 7701 of the Code.

(14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax liability. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.

(15) The amount paid during the income year, pursuant to 7 U.S.C. § 1445-2, as marketing assessments on tobacco grown by the corporation in North Carolina.

- (16) The amount of natural gas expansion surcharges collected by a natural gas local distribution company under G.S. 62-158.
- (c) The following other adjustments to federal taxable income shall be made in determining State net income:
- (1) In determining State net income, no deduction shall be allowed for annual amortization of bond premiums applicable to any bond acquired prior to January 1, 1963. The amount of premium paid on any such bond shall be deductible only in the year of sale or other disposition.
 - (2) Federal taxable income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to property which has been depreciated or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes prior to the effective date of this division.
 - (3) No deduction is allowed for any direct or indirect expenses related to income not taxed under this Division; provided, no adjustment shall be made under this subsection for adjustments addressed in G.S. 105-130.5(a) and (b).
 - (4) The taxpayer shall add to federal taxable income the amount of any recovery during the taxable year not included in federal taxable income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Division but, due to differences between the Code and this Division, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from federal taxable income the amount of any recovery during the taxable year included in federal taxable income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Division, did not reduce the amount of the taxpayer's tax imposed by this Division.
 - (d) Repealed by Session Laws 1987, c. 778, s. 3.
 - (e) Notwithstanding any other provision of this section, any recapture of depreciation required under the Code must be included in a corporation's State net income to the extent required for federal income tax purposes.

(f) Expired. (1967, c. 1110, s. 3; 1969, cc. 1113, 1124; 1971, c. 820, s. 1; c. 1206, s. 1; 1973, c. 1287, s. 4; 1975, c. 764, s. 4; 1977, 2nd Sess., c. 1200, s. 1; 1979, c. 179, s. 2; c. 801, s. 32; 1981, c. 704, s. 20; c. 855, s. 1; 1983, c. 61; c. 713, ss. 70-73, 82, 83; 1985, c. 720, s. 1; c. 791, s. 43; 1985 (Reg. Sess., 1986), c. 825; 1987, c. 89; c. 637, s. 1; c. 778, ss. 2, 3; c. 804, s. 3; 1991, c. 598, ss. 3, 10; 1991 (Reg. Sess., 1992), c. 857, s. 1; 1993 (Reg. Sess., 1994), c. 745, ss. 4, 5; 1995, c. 509, s. 50; 1996, 2nd Ex. Sess., c. 14, ss. 4, 10.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or re-

peal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are

not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1996, Second Extra Ses-

sion, c. 14, ss. 4, 10, effective for taxable years beginning on or after January 1, 1996, deleted "issued by any corporation" following "stock" in subdivision (b)(3) and added subdivision (c)(4).

§ 105-130.7. Deductible portion of dividends.

Dividends from stock issued by a corporation are deductible to the extent provided in this section.

- (1), (2). Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3, effective January 1, 1996.
- (3) A corporation may deduct such proportionate part of dividends received by it from a regulated investment company or a real estate investment trust, as defined in G.S. 105-130.12, as represents and corresponds to income received by such regulated investment company or real estate investment trust which would not be taxed by this State if received directly by the corporation.
- (3a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3, effective January 1, 1996.
- (4) A corporation that, at the close of its taxable year, has its commercial domicile within North Carolina shall be allowed to deduct all dividends received from corporations in which it owns more than fifty percent (50%) of the outstanding voting stock.
- (5) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 3, effective January 1, 1996.
- (6) In no case shall the total amount of dividends that are allowed as a deduction to a corporation under subdivision (3) of this section exceed fifteen thousand dollars (\$15,000) for the taxable year. (1939, c. 158, s. 322; 1941, c. 50, s. 5; 1943, c. 400, s. 4; c. 668; 1945, c. 708, s. 4; c. 752, s. 3; 1947, c. 501, s. 4; c. 894; 1949, c. 392, s. 3; 1951, c. 643, s. 4; c. 937, s. 4; 1953, c. 1031, s. 1; c. 1302, s. 4; 1955, c. 1100, s. 1; c. 1331, s. 1; cc. 1332, 1342; c. 1343, s. 1; 1957, c. 1340, ss. 4, 8; 1959, c. 1259, s. 4; 1961, c. 201, s. 1; c. 1148; 1963, c. 1169, s. 2; 1965, c. 1048; 1967, c. 1110, s. 3; 1969, c. 1124; 1973, c. 476, s. 193; c. 1053, s. 3; 1975, c. 661, s. 2; 1979, c. 801, s. 33; 1987, c. 804, s. 10; 1989 (Reg. Sess., 1990), c. 814, s. 12; 1996, 2nd Ex. Sess., c. 14, s. 3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective for taxable years beginning on or after January 1, 1996, rewrote this section.

§ 105-130.38: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 1, effective for taxable years beginning on or after January 1, 1996.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been

available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 105-130.40: Recodified as § 105-129.8 by Session Laws 1996, Second Extra Session, c. 13, s. 3.2, effective for taxable years beginning on or after January 1, 1996.

§ 105-130.41. Credit for North Carolina State Ports Authority wharfage, handling, and throughput charges.

(a) Credit. — A taxpayer whose waterborne cargo is loaded onto or unloaded from an ocean carrier calling at the State-owned port terminal at Wilmington or Morehead City, without consideration of the terms under which the cargo is moved, is allowed a credit against the tax imposed by this Division. The amount of credit allowed is equal to the excess of the wharfage, handling (in or out), and throughput charges assessed on the cargo for the current taxable year over an amount equal to the average of the charges for the current taxable year and the two preceding taxable years. The credit applies to forest products, break-bulk cargo and container cargo, including less-than-container-load cargo, that is loaded onto or unloaded from an ocean carrier calling at either the Wilmington or Morehead City port terminal and to bulk cargo that is loaded onto or unloaded from an ocean carrier calling at the Morehead City port terminal. To obtain the credit, taxpayers must provide to the Secretary a statement from the State Ports Authority certifying the amount of charges for which a credit is claimed and any other information required by the Secretary.

(b) Limitations. — This credit may not exceed fifty percent (50%) of the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except tax payments made by or on behalf of the corporation. Any unused portion of the credit may be carried forward for the succeeding five years. The maximum cumulative credit that may be claimed by a corporation under this section is one million dollars (\$1,000,000).

(c) Definitions. — For purposes of this section, the terms "handling" (in or out) and "wharfage" have the meanings provided in the State Ports Tariff Publications, "Wilmington Tariff, Terminal Tariff #6," and "Morehead City Tariff, Terminal Tariff #1." For purposes of this section, the term "throughput" has the same meaning as "wharfage" but applies only to bulk products, both dry and liquid. (1991 (Reg. Sess., 1992), c. 977, s. 1; 1993 (Reg. Sess., 1994), c. 681, s. 1; 1995, c. 17, s. 17; c. 495, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 15.3(a).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective for taxable years beginning on or after January 1, 1996, inserted "forest products" in the third sentence of subsection (a).

DIVISION II. INDIVIDUAL INCOME TAX.**§ 105-134.1. Definitions.**

The following definitions apply in this Division:

- (1) Code. — Defined in G.S. 105-228.90.
- (2) Department. — The Department of Revenue.
- (3) Educational institution. — An educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.
- (4) Fiscal year. — Defined in section 441(e) of the Code.
- (5) Gross income. — Defined in section 61 of the Code.
- (6) Head of household. — Defined in section 2(b) of the Code.
- (7) Individual. — A human being.
- (7a) Limited liability company. — Either a domestic limited liability company organized under Chapter 57C of the General Statutes or a foreign limited liability company authorized by that Chapter to transact business in this State that is classified for federal income tax purposes as a partnership. As applied to a limited liability company that is a partnership under this Division, the term "partner" means a member of the limited liability company.
- (7b) Manufacturing and processing. — Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.
- (8) Married individual. — An individual who is married and is considered married as provided in section 7703 of the Code.
- (9) Nonresident individual. — An individual who is not a resident of this State.
- (10) North Carolina taxable income. — Defined in G.S. 105-134.5.
- (10a) Partnership. — A domestic partnership, a foreign partnership, or a limited liability company.
- (11) Person. — Defined in G.S. 105-228.90.
- (12) Resident. — An individual who is domiciled in this State at any time during the taxable year or who resides in this State during the taxable year for other than a temporary or transitory purpose. In the absence of convincing proof to the contrary, an individual who is present within the State for more than 183 days during the taxable year is presumed to be a resident, but the absence of an individual from the state for more than 183 days raises no presumption that the individual is not a resident. A resident who removes from the State during a taxable year is considered a resident until he has both established a definite domicile

elsewhere and abandoned any domicile in this State. The fact of marriage does not raise any presumption as to domicile or residence.

- (13) Retirement benefits. — Amounts paid to a former employee or the beneficiary of a former employee under a written retirement plan established by the employer to provide payments to an employee or the beneficiary of an employee after the end of the employee's employment with the employer where the right to receive the payments is based upon the employment relationship. With respect to a self-employed individual or the beneficiary of a self-employed individual, the term means amounts paid to the individual or beneficiary of the individual under a written retirement plan established by the individual to provide payments to the individual or the beneficiary of the individual after the end of the self-employment. In addition, the term includes amounts received from an individual retirement account described in section 408 of the Code or from an individual retirement annuity described in section 408 of the Code. For the purpose of this subdivision, the term "employee" includes a volunteer worker.
- (14) S Corporation. — Defined in G.S. 105-131(b).
- (15) Secretary. — The Secretary of Revenue.
- (16) Taxable income. — Defined in section 63 of the Code.
- (17) Taxable year. — Defined in section 441(b) of the Code.
- (18) Taxpayer. — An individual subject to the tax imposed by this Division.
- (19) This State. — The State of North Carolina. (1989, c. 728, s. 1.4; c. 792, s. 1.2; 1989 (Reg. Sess., 1990), c. 814, s. 15; c. 981, s. 5; 1991, c. 689, s. 252; 1991 (Reg. Sess., 1992), c. 922, s. 6; 1993, c. 12, s. 7; c. 354, s. 13; 1996, 2nd Ex. Sess., c. 13, s. 8.2.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or re-

pealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective for taxable years beginning on or after January 1, 1996, added subdivision (7b).

§ 105-134.6. Adjustments to taxable income.

(a) S Corporations. — The pro rata share of each shareholder in the income attributable to the State of an S Corporation shall be adjusted as provided in G.S. 105-130.5. The pro rata share of each resident shareholder in the income not attributable to the State of an S Corporation shall be subject to the adjustments provided in subsections (b), (c), and (d) of this section.

(b) Deductions. — The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

- (1) Interest upon the obligations of any of the following:
 - a. The United States or its possessions.

- b. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.
- c. A nonprofit educational institution organized or chartered under the laws of this State.
- (2) Gain from the disposition of obligations issued before July 1, 1995, to the extent the gain is exempt from tax under the laws of this State.
- (3) Benefits received under Title II of the Social Security Act and amounts received from retirement annuities or pensions paid under the provisions of the Railroad Retirement Act of 1937.
- (4) Repealed by Session Laws 1989 (Reg. Sess., 1990), c. 1002, s. 2.
- (5) Refunds of state, local, and foreign income taxes included in the taxpayer's gross income.
- (6)a. An amount, not to exceed four thousand dollars (\$4,000), equal to the sum of the amount calculated in subparagraph b. plus the amount calculated in subparagraph c.
- b. The amount calculated in this subparagraph is the amount received during the taxable year from one or more state, local, or federal government retirement plans.
- c. The amount calculated in this subparagraph is the amount received during the taxable year from one or more retirement plans other than state, local, or federal government retirement plans, not to exceed a total of two thousand dollars (\$2,000) in any taxable year.
- d. In the case of a married couple filing a joint return where both spouses received retirement benefits during the taxable year, the maximum dollar amounts provided in this subdivision for various types of retirement benefits apply separately to each spouse's benefits.
- (7) Recodified as G.S. 105-134.6(d)(1).
- (8) Recodified as G.S. 105-134.6(d)(2).
- (9) Income that is (i) earned or received by an enrolled member of a federally recognized Indian tribe and (ii) derived from activities on a federally recognized Indian reservation while the member resides on the reservation. Income from intangibles having a situs on the reservation and retirement income associated with activities on the reservation are considered income derived from activities on the reservation.
- (10) The amount by which the basis of property under this Article exceeds the basis of the property under the Code, in the year the taxpayer disposes of the property.
- (11) The amount paid to the taxpayer as severance wages as the result of the permanent closure of a manufacturing or processing plant, not to exceed a maximum of thirty-five thousand dollars (\$35,000) for the taxable year.
- (c) Additions. — The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in taxable income:
 - (1) Interest upon the obligations of states other than this State, political subdivisions of those states, and agencies of those states and their political subdivisions.

- (2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code.
- (3) Any amount deducted from gross income under section 164 of the Code as state, local, or foreign income tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount by which the taxpayer's allowable standard deduction has been increased under section 63(c)(4) of the Code.
- (4) The amount by which the taxpayer's standard deduction has been increased for inflation under section 63(c)(4)(A) of the Code.
- (4a) **(Effective for taxable years beginning on or after January 1, 1995)** The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the Code. This amount is reduced by two hundred fifty dollars (\$250.00) for each personal exemption if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:

Filing Status	AGI
Married, filing jointly	\$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.

- (4a) **(Effective for taxable years beginning on or after January 1, 1996)** The amount by which each of the taxpayer's personal exemptions has been increased for inflation under section 151(d)(4)(A) of the Code. This amount is reduced by five hundred dollars (\$500.00) for each personal exemption if the taxpayer's adjusted gross income (AGI), as calculated under the Code, is less than the following amounts:

Filing Status	AGI
Married, filing jointly	\$100,000
Head of Household	80,000
Single	60,000
Married, filing separately	50,000.

For the purposes of this subdivision, if the taxpayer's personal exemptions have been reduced by the applicable percentage under section 151(d)(3) of the Code, the amount by which the personal exemptions have been increased for inflation is also reduced by the applicable percentage.

- (5) The fair market value, up to a maximum of one hundred thousand dollars (\$100,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12 and the market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14.

- (6) The amount by which the basis of property under the Code exceeds the basis of the property under this Article, in the year the taxpayer disposes of the property.
- (7) The amount of federal estate tax that is attributable to an item of income in respect of a decedent and is deducted from gross income under section 691(c) of the Code.
- (d) Other Adjustments. — The following adjustments to taxable income shall be made in calculating North Carolina taxable income:
 - (1) The amount of inheritance tax attributable to an item of income in respect of a decedent required to be included in gross income under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, may be deducted in the year the item of income is included. The amount of inheritance tax attributable to an item of income in respect of a decedent is (i) the amount by which the inheritance tax paid under Article 1 of this Chapter on property transferred to a beneficiary by a decedent exceeds the amount of inheritance tax that would have been payable by the beneficiary if the item of income in respect of a decedent had not been included in the property transferred to the beneficiary by the decedent, (ii) multiplied by a fraction, the numerator of which is the amount required to be included in gross income for the taxable year under the Code, adjusted as provided in G.S. 105-134.5, 105-134.6, and 105-134.7, and the denominator of which is the total amount of income in respect of a decedent transferred to the beneficiary by the decedent. For an estate or trust, the deduction allowed by this subdivision shall be computed by excluding from the gross income of the estate or trust the portion, if any, of the items of income in respect of a decedent that are properly paid, credited, or to be distributed to the beneficiaries during the taxable year.

The Secretary may provide to a beneficiary of an item of income in respect of a decedent any information contained on an inheritance tax return that the beneficiary needs to compute the deduction allowed by this subdivision.
 - (2) The taxpayer may deduct the amount by which the taxpayer's deductions allowed under the Code were reduced, and the amount of the taxpayer's deductions that were not allowed, because the taxpayer elected a federal tax credit in lieu of a deduction. This deduction is allowed only to the extent that a similar credit is not allowed by this Division for the amount.
 - (3) The taxpayer shall add to taxable income the amount of any recovery during the taxable year not included in taxable income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Division but, due to differences between the Code and this Division, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from taxable income the amount of any recovery during the taxable year included in taxable income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this

Division, did not reduce the amount of the taxpayer's tax imposed by this Division. (1989, c. 718, s. 2; c. 728, s. 1.4; c. 770, ss. 41.2, 41.3; c. 792, s. 1.1; 1989 (Reg. Sess., 1990), c. 984, s. 4; c. 1002, s. 2; 1991, c. 45, s. 9; c. 453, s. 1; c. 689, ss. 253, 254; 1991 (Reg. Sess., 1992), c. 1007, s. 3; 1993, c. 12, s. 8; c. 443, s. 8; c. 485, s. 9; 1993 (Reg. Sess., 1994), c. 745, s. 7; 1995, c. 17, s. 5; c. 42, ss. 1, 2(a), (b); c. 46, s. 3; c. 370, s. 3; 1996, 2nd Ex. Sess., c. 13, s. 8.1; c. 14, s. 9.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed

by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1996, Second Extra Session, c. 13, s. 8.1, effective for taxable years beginning on or after January 1, 1996, added subdivision (b)(11).

Session Laws 1996, Second Extra Session, c. 14, s. 9, effective for taxable years beginning on or after January 1, 1996, added subdivision (d)(3).

§ 105-151.15: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 1, effective for taxable years beginning on or after January 1, 1996.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been

available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

§ 105-151.17: Recodified as § 105-129.8 by Session Laws 1996, Second Extra Session, c. 13, s. 3.4, effective for taxable years beginning on or after January 1, 1996.

§ 105-151.19: Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 2, effective for taxable years beginning on or after January 1, 1996.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights

or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before

its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

“Prosecutions for offenses committed

before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.”

**§ 105-151.20. (Repealed effective January 1, 2003)
Credit or partial refund for tax paid on
certain federal retirement benefits.**

(a) Purpose; Definitions. — The purpose of this section is to benefit certain retired federal government workers on account of their public service. The following definitions apply in this section:

- (1) Federal retirement benefits. — Retirement benefits received from one or more federal government retirement plans.
- (2) Net pension tax. — The amount of tax a taxpayer paid under this Division for the 1985, 1986, 1987, and 1988 tax years on federal retirement benefits, without interest, less any part of the tax for which the taxpayer received a credit under this section before 1997 and any part of the tax refunded to the taxpayer before 1997.
- (3) Tax year. — The taxpayer's taxable year beginning on a day in the applicable calendar year.

(b) Credit. — A taxpayer who received federal retirement benefits during the 1985, 1986, 1987, or 1988 tax year may claim a credit against the tax imposed by this Division equal to the net pension tax on those benefits. The credit allowed under this section shall be taken in equal installments over the taxpayer's first three taxable years beginning on or after January 1, 1996. The credit allowed under this section may not exceed the amount of tax imposed by this Division reduced by the sum of all credits allowed against the tax, except payments of tax made by or on behalf of the taxpayer.

(c) Partial Refund Alternative. — If the amount of tax imposed by this Division on the taxpayer for the taxpayer's 1996 tax year, reduced by the sum of all credits allowed against the tax except payments of tax made by or on behalf of the taxpayer, is less than five percent (5%) of the taxpayer's net pension tax for which credit is allowed, the taxpayer is eligible to elect a partial refund under this subsection in lieu of claiming the credit. The partial refund allowed under this subsection is equal to the lesser of eighty-five percent (85%) of the taxpayer's net pension tax or the reduced amount determined by the Secretary as provided in this subsection. To elect the partial refund, an eligible taxpayer must file with the Secretary on or before April 15, 1997, a written request for a partial refund of the taxpayer's net pension. The Secretary shall calculate from these requests eighty-five percent (85%) of the total amount of net pension tax for which partial refunds have been claimed and, if this sum exceeds the amount in the Federal Retiree Refund Account created in this section, shall allocate the amount in the Account among the eligible taxpayers claiming partial refunds by reducing each taxpayer's claimed refund in proportion to the size of the claimed refund. The Secretary shall remit these partial refunds before January 1, 1998.

(d) Substantiation; Deceased Taxpayers. — In order to claim a refund or credit under this section, a taxpayer must provide any

§ 105-151.20 has a delayed repeal date. See notes.

information required by the Secretary to establish the taxpayer's eligibility for tax benefit and the amount of the tax benefit. In the case of a taxpayer who is deceased, the representative of the taxpayer's estate may claim the refund or credit in the name of the deceased taxpayer.

(e) **Federal Retiree Accounts.** — There are created in the Department of Revenue two special accounts to be known as the Federal Retiree Refund Account and the Federal Retiree Administration Account. Funds in the Federal Retiree Refund Account shall be spent only for partial refunds pursuant to subsection (c) of this section. The Department of Revenue may use funds in the Federal Retiree Administration Account only for the costs of administering this section. Funds in the Federal Retiree Refund Account and the Federal Retiree Administration Account shall not revert to the General Fund until the Director of the Budget certifies that the Department of Revenue has completed all duties necessary to implement this section, including processing the escheat of refund checks that have not been cashed. (1989 (Reg. Sess., 1990), c. 984, s. 6; 1991, c. 45, s. 11; 1996, 2nd Ex. Sess., c. 19, s. 1.)

Section Repealed Effective January 1, 2003. — This section is repealed, effective January 1, 2003, by Session Laws 1996, Second Extra Session, c. 19, s. 2.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 19, s. 3 provides: "(a) The State Controller shall reserve from the unreserved credit balance as determined on a cash basis remaining in the General Fund at the end of the 1995-96 fiscal year the sum of twenty-five million dollars (\$25,000,000) to the credit of the Federal Retiree Refund Account created in this act. These funds shall be used to make refunds to federal retirees as provided in Section 1 of this act.

"(b) The State Controller shall reserve from the unreserved credit balance as determined on a cash basis remaining in the General Fund at the end of the 1995-96 fiscal year the sum of one million two hundred thousand dollars (\$1,200,000) to the credit of the Federal Retiree Administration Account created

in this act. These funds shall be used to administer the credits and refunds to federal retirees as provided in Section 1 of this act.

"(c) The earmarking contained in this section comes from the excess of General Fund revenues collected for the 1995-96 fiscal year over prior estimates used in the calculation of General Fund budget availability for the purpose of adopting changes to the 1996-97 General Fund budget. These funds were not included in earlier budget reform statements for proposals to adjust the 1996-97 General Fund budget."

Effect of Amendments. — The 1996, Second Extra Session amendment, effective for taxable years beginning on or after January 1, 1996, in the catchline inserted "or partial refund" and substituted "federal" for "government"; added present subsections (a), (c), (d), and (e); and added the subsection (b) designation and subcatchline and rewrote section as subsection (b).

§ 105-151.22. Credit for North Carolina State Ports Authority wharfage, handling, and throughput charges.

(a) **Credit.** — A taxpayer whose waterborne cargo is loaded onto or unloaded from an ocean carrier calling at the State-owned port terminal at Wilmington or Morehead City, without consideration of the terms under which the cargo is moved, is allowed a credit against the tax imposed by this Division. The amount of credit

allowed is equal to the excess of the wharfage, handling (in or out), and throughput charges assessed on the cargo for the current taxable year over an amount equal to the average of the charges for the current taxable year and the two preceding taxable years. The credit applies to forest products, break-bulk cargo and container cargo, including less-than-container-load cargo, that is loaded onto or unloaded from an ocean carrier calling at either the Wilmington or Morehead City port terminal and to bulk cargo that is loaded onto or unloaded from an ocean carrier calling at the Morehead City port terminal. To obtain the credit, taxpayers must provide to the Secretary a statement from the State Ports Authority certifying the amount of charges for which a credit is claimed and any other information required by the Secretary.

(b) Limitations. — This credit may not exceed fifty percent (50%) of the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable, except tax payments made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding five years. The maximum cumulative credit that may be claimed by a taxpayer under this section is one million dollars (\$1,000,000).

(c) Definitions. — For purposes of this section, the terms “handling” (in or out) and “wharfage” have the meanings provided in the State Ports Tariff Publications, “Wilmington Tariff, Terminal Tariff #6,” and “Morehead City Tariff, Terminal Tariff #1.” For purposes of this section, the term “throughput” has the same meaning as “wharfage” but applies only to bulk products, both dry and liquid. (1991 (Reg. Sess., 1992), c. 977, s. 2; 1993 (Reg. Sess., 1994), c. 681, s. 2; 1995, c. 17, s. 17; c. 495, ss. 2-4; 1996, 2nd Ex. Sess., c. 18, s. 15.3(b).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: “This act shall be known as the Current Operations Appropriations Act of 1996.”

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective for taxable years beginning on or after January 1, 1996, inserted “forest products” in the third sentence of subsection (a).

§ 105-151.26. Credit for charitable contributions by nonitemizers.

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Division an amount equal to two and three-fourths percent (2.75%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the

amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer. (1996, 2nd Ex. Sess., c. 13, s. 7.1.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 10.2(7), made this section effective for taxable years beginning on or after January 1, 1997.

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Ses-

sion, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

DIVISION V. TAX CREDITS FOR QUALIFIED BUSINESS INVESTMENTS.

§ 105-163.010. (Repealed effective for investments made on or after January 1, 1999) Definitions.

The following definitions apply in this Division:

- (1) **Affiliate.** — An individual or business that controls, is controlled by, or is under common control with another individual or business.
- (2) **Business.** — A corporation, partnership, association, or sole proprietorship operated for profit.
- (3) **Control.** — A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.
- (4) **Equity security.** — Common stock, preferred stock, or an interest in a partnership, or subordinated debt that is convertible into, or entitles the holder to receive upon its exercise, common stock, preferred stock, or an interest in a partnership.
- (5) **Financial institution.** — A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841 et seq., or its wholly-owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a et seq., or its wholly-owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., whether or not it is required to register under that act, (iv) a small business investment

§ 105-163.010 has a delayed repeal date. See notes.

company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661 et seq., (v) a pension or profit-sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance company; provided, however, that a business, other than a small business investment company, is not a financial institution if its net worth, when added to the net worth of all of its affiliates, is less than ten million dollars (\$10,000,000); provided further, however, that a business is not a financial institution if it does not generally market its services to the public and it is controlled by a business that is not a financial institution.

(6) Repealed by Session Laws 1991, c. 637.

(6a) North Carolina Enterprise Corporation. — A corporation established in accordance with Article 3 of Chapter 53A of the General Statutes or a limited partnership in which a North Carolina Enterprise Corporation is the only general partner.

(6b) Pass-through entity. — An entity or business, including a limited partnership, a general partnership, a joint venture, a Subchapter S Corporation, or a limited liability company, all of which is treated as owned by individuals or other entities under the federal tax laws, in which the owners report their share of the income, losses, and credits from the entity or business on their income tax returns filed with this State. For the purpose of this Division, an owner of a pass-through entity is an individual or entity who is treated as an owner under the federal tax laws.

(7) Qualified business venture. — A business that (i) engages primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry, and (ii) is registered with the Secretary of State under G.S. 105-163.013.

(8) Qualified grantee business. — A business that (i) has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program, and (ii) is registered with the Secretary of State under G.S. 105-163.013.

(9) Repealed by Session Laws 1993, c. 443, s. 1.

(9a) Real estate-related business. — A business that is involved in or related to the brokerage, selling, purchasing, leasing, operating, or managing of hotels, motels, nursing homes or other lodging facilities, golf courses, sports or social clubs, restaurants, storage facilities, or commercial or residential lots or buildings is a real estate-related business, except that a real estate-related business does not include (i) a business that purchases or leases real estate from others for the purpose of providing itself with facilities from which to conduct a business that is not itself a real estate-related

§ 105-163.010 has a delayed repeal date. See notes.

business or (ii) a business that is not otherwise a real estate-related business but that leases, subleases, or otherwise provides to one or more other persons a number of square feet of space which in the aggregate does not exceed fifty percent (50%) of the number of square feet of space occupied by the business for its other activities.

- (9b) Selling or leasing at retail. — A business is selling or leasing at retail if the business either (i) sells or leases any product or service of any nature from a store or other location open to the public generally or (ii) sells or leases products or services of any nature by means other than to or through one or more other businesses.
- (9c) Service-related industry. — A business is engaged in a service-related industry, whether or not it also sells a product, if it provides services to customers or clients and does not as a substantial part of its business engage in a business described in G.S. 105-163.013(b)(4). A business is engaged as a substantial part of its business in an activity described in G.S. 105-163.013(b)(4) if (i) its gross revenues derived from all activities described in that subdivision exceed twenty-five percent (25%) of its gross revenues in any fiscal year or (ii) it is established as one of its primary purposes to engage in any activities described in that subdivision, whether or not its purposes were stated in its articles of incorporation or similar organization documents.
- (10) Security. — A security as defined in Section 2(1) of the Securities Act of 1933, 15 U.S.C. § 77b(1).
- (11) Subordinated debt. — Indebtedness that (i) by its terms matures five or more years after its issuance, (ii) is not secured, and (iii) is subordinated to all other indebtedness of the issuer issued or to be issued to a financial institution other than a financial institution described in subdivisions (5)(ii) through (5)(v) of this section. Any portion of indebtedness that matures earlier than five years after its issuance is not subordinated debt. (1987, c. 852, s. 1; 1987 (Reg. Sess., 1988), c. 882, s. 2; 1989 (Reg. Sess., 1990), c. 848, s. 2; 1991, c. 637, s. 1; 1993, c. 443, s. 1; 1996, 2nd Ex. Sess., c. 14, s. 7.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are

not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective for investments made on or after January 1, 1997, deleted "North Carolina" preceding "business that" in subdivisions (7) and (8); and inserted "the Kenan Institute for Engineering, Technology and Science" in subdivision (8).

§ 105-163.011. (Repealed effective for investments made on or after January 1, 1999) Tax credits allowed.

(a) No Credit for Brokered Investments. — No credit is allowed under this section for a purchase of equity securities or subordinated debt if a broker's fee or commission or other similar remuneration is paid or given directly or indirectly for soliciting the purchase.

(b) Individuals. — Subject to the limitations contained in G.S. 105-163.012, an individual who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000). The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

(b1) Pass-Through Entities. — This subsection does not apply to a pass-through entity that has committed capital under management in excess of five million dollars (\$5,000,000) or to a pass-through entity that is a qualified grantee business, a qualified business venture, or a North Carolina Enterprise Corporation. Subject to the limitations provided in G.S. 105-163.012, a pass-through entity that purchases the equity securities or subordinated debt of a qualified grantee business or a qualified business venture directly from the business is eligible for a tax credit equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a pass-through entity for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of another pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The pass-through entity is not eligible for the credit for the year in which the investment by the pass-through entity is made but shall be eligible for the credit for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

Each individual who is an owner of a pass-through entity is allowed as a credit against the tax imposed by Division II of this Article for the taxable year an amount equal to the owner's allocated share of the credits for which the pass-through entity is eligible under this subsection. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Division, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000).

If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(c) Application. — To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar

§ 105-163.011 has a delayed repeal date. See notes.

year in which the investment was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the investment was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If an investment for which a credit is applied for was paid for other than in money, the taxpayer shall include with the application a certified appraisal of the value of the property used to pay for the investment. The application for a credit for an investment made by a pass-through entity must be filed by the pass-through entity.

(d) Penalties. — The penalties provided in G.S. 105-236 apply in this Division. (1987, c. 852, s. 1; 1987 (Reg. Sess., 1988), c. 882, ss. 3, 3.1; 1989 (Reg. Sess., 1990), c. 848, s. 3; 1991, c. 637, s. 2; 1993, c. 443, s. 2; 1995, c. 491, s. 1; 1996, 2nd Ex. Sess., c. 14, s. 7.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the

statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective for investments made on or after January 1, 1997, rewrote subsections (a) and (b1); and in subsection (b) substituted "a qualified business venture or a qualified grantee business directly from that business" for "(i) a qualified business venture, (ii) a qualified grantee business, or (iii) a North Carolina Enterprise Corporation directly from that entity."

§ 105-163.012. (Repealed effective for investments made on or after January 1, 1999) Limit; carry-over; ceiling; reduction in basis.

(a) The credit allowed a taxpayer under G.S. 105-163.011 may not exceed the amount of income tax imposed by Division II of this Article for the taxable year reduced by the sum of all other credits allowable except tax payments made by or on behalf of the taxpayer. The amount of unused credit allowed under G.S. 105-163.011 may be carried forward for the next five succeeding years. The fifty thousand dollar (\$50,000) limitation on the amount of credit allowed a taxpayer under G.S. 105-163.011 does not apply to unused amounts carried forward under this subsection.

(b) The total amount of all tax credits allowed to taxpayers under G.S. 105-163.011 for investments made in a calendar year may not exceed six million dollars (\$6,000,000). The Secretary of Revenue shall calculate the total amount of tax credits claimed from the applications filed pursuant to G.S. 105-163.011(c). If the total amount of tax credits claimed for investments made in a calendar year exceeds six million dollars (\$6,000,000), the Secretary shall

§ 105-163.012 has a delayed repeal date. See notes.

allow a portion of the credits claimed by allocating a total of six million dollars (\$6,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer.

(c) If a credit claimed under G.S. 105-163.011 is reduced as provided in this section, the Secretary shall notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year following the calendar year in which the investment was made. The Secretary's allocations based on applications filed pursuant to G.S. 105-163.011(c) are final and shall not be adjusted to account for credits applied for but not claimed.

(d) The taxpayer's basis in the equity securities or subordinated debt acquired as a result of an investment in a qualified business venture or qualified grantee business shall be reduced for the purposes of this Article by the amount of allowable credit. "Allowable credit" means the amount of credit allowed under G.S. 105-163.011 reduced as provided in subsection (c) of this section. (1987, c. 852, s. 1; 1987 (Reg. Sess., 1988), c. 882, ss. 4, 4.1; 1989 (Reg. Sess., 1990), c. 848, s. 4; 1991, c. 637, s. 3; 1993, c. 443, s. 3; 1993 (Reg. Sess., 1994), c. 745, s. 8; 1996, 2nd Ex. Sess., c. 14, ss. 6, 7.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1996, Second Extra Session, c. 14, s. 6, effective for investments made on or after January 1, 1996, re-

wrote subsection (b).

Session Laws 1996, Second Extra Session, c. 14, s. 7, effective for investments made on or after January 1, 1997, in subsection (a), substituted "Division II of this Article" for "Division I or II of this Article, the amount of franchise tax imposed by Article 3 of this Chapter, or the amount of gross premiums tax imposed by Article 8B of this Chapter, as appropriate", substituted "limitation" for "and seven hundred fifty thousand dollar (\$750,000) limitations," and substituted "does not apply" for "do not apply"; and in subsection (d) deleted from the beginning "Unless the taxpayer is required to add the amount of allowable credit to federal taxable income under G.S. 105-130.5(a)(10)," deleted "North Carolina Enterprise Corporation" preceding "qualified business venture," and made a punctuation change.

§ 105-163.013. (Repealed effective for investments made on or after January 1, 1999) Registration.

(a) Repealed by Session Laws 1993, c. 443, s. 4, effective for taxable years beginning on or after January 1, 1994.

(b) Qualified Business Ventures. — In order to qualify as a qualified business venture under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified

§ 105-163.013 has a delayed repeal date. See notes.

business venture. A business meets the requirements for registration as a qualified business venture if all of the following are true as of the date the business files the required application:

- (1) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7, effective January 1, 1997.
- (1b) Either (i) it was organized after January 1 of the calendar year in which its application is filed or (ii) during its most recent fiscal year before filing the application, it had gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars (\$5,000,000) or less on a consolidated basis.
- (2) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7, effective January 1, 1997.
- (3) It is organized to engage primarily in manufacturing, processing, warehousing, wholesaling, research and development, or a service-related industry.
- (4) It does not engage as a substantial part of its business in any of the following:
 - a. Providing a professional service as defined in Chapter 55B of the General Statutes.
 - b. Construction or contracting.
 - c. Selling or leasing at retail.
 - d. The purchase, sale, or development, or purchasing, selling, or holding for investment of commercial paper, notes, other indebtedness, financial instruments, securities, or real property, or otherwise make investments.
 - e. Providing personal grooming or cosmetics services.
 - f. Offering any form of entertainment, amusement, recreation, or athletic or fitness activity for which an admission or a membership is charged.
- (5) It was not formed for the primary purpose of acquiring all or part of the stock or assets of one or more existing businesses.
- (6) It is not a real estate-related business.

The effective date of registration for a qualified business venture whose application is accepted for registration is the filing date of its application. No credit is allowed under this Division for an investment made before the effective date of the registration or after the registration is revoked.

To remain qualified as a qualified business venture, the business must renew its registration annually as prescribed by rule by filing a financial statement for the most recent fiscal year showing gross revenues, as determined in accordance with generally accepted accounting principles, of five million dollars (\$5,000,000) or less on a consolidated basis and an application for renewal in which the business certifies the facts required in the original application.

Failure of a qualified business venture to renew its registration by the applicable deadline shall result in revocation of its registration effective as of the next day after the renewal deadline, but shall not result in forfeiture of tax credits previously allowed to taxpayers who invested in the business except as provided in G.S. 105-163.014. The Secretary of State shall send the qualified business venture notice of revocation within 60 days after the renewal deadline. A qualified business venture may apply to have its registration rein-

§ 105-163.013 has a delayed repeal date. See notes.

stated by the Secretary of State by filing an application for reinstatement, accompanied by the reinstatement application fee and a late filing penalty of one thousand dollars (\$1,000), within 30 days after receipt of the revocation notice from the Secretary of State. A business that seeks approval of a new application for registration after its registration has been revoked must also pay a penalty of one thousand dollars (\$1,000). A registration that has been reinstated is treated as if it had not been revoked.

If the gross revenues of a qualified business venture exceed five million dollars (\$5,000,000) in a fiscal year, the business must notify the Secretary of State in writing of this fact by filing a financial statement showing the revenues of the business for that year.

(c) **Qualified Grantee Businesses.** — In order to qualify as a qualified grantee business under this Division, a business must be registered with the Securities Division of the Department of the Secretary of State. To register, the business must file with the Secretary of State an application and any supporting documents the Secretary of State may require from time to time to determine that the business meets the requirements for registration as a qualified grantee business. A business meets the requirements for registration as a qualified grantee business if it has received during the preceding three years a grant or other funding from the North Carolina Technological Development Authority, the North Carolina Technological Development Authority, Inc., North Carolina First Flight, Inc., the North Carolina Biotechnology Center, the Microelectronics Center of North Carolina, the Kenan Institute for Engineering, Technology and Science, or the Federal Small Business Innovation Research Program.

The effective date of registration for a qualified grantee business whose application is accepted for registration is the filing date of its application. No credit is allowed under this Division for an investment made before the effective date of the registration or after the registration is revoked.

To remain qualified as a qualified grantee business, the business must renew its registration annually as prescribed by rule by filing an application for renewal in which the business certifies the facts listed in this subsection.

(d) **Application Forms; Rules; Fees.** — Applications for registration, renewal of registration, and reinstatement of registration under this section shall be in the form required by the Secretary of State. The Secretary of State may, by rule, require applicants to furnish supporting information in addition to the information required by subsections (b) and (c) of this section. The Secretary of State may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary's responsibilities under this Division. The Secretary of State shall prepare blank forms for the applications and shall distribute them throughout the State and furnish them on request. Each application shall be signed by the owners of the business or, in the case of a corporation, by its president, vice-president, treasurer, or secretary. There shall be annexed to the application the affirmation of the person making the application in the following form: "Under penalties prescribed by law, I certify and affirm that to the best of my knowledge and belief this application is true and complete." A person who submits a false application is guilty of a Class 1 misdemeanor.

§ 105-163.013 has a delayed repeal date. See notes.

The fee for filing an application for registration under this section is one hundred dollars (\$100.00). The fee for filing an application for renewal of registration under this section is fifty dollars (\$50.00). The fee for filing an application for reinstatement of registration under this section is fifty dollars (\$50.00).

An application for renewal of registration under this section shall indicate whether the applicant is a minority business, as defined in G.S. 143-128, and shall include a report of the number of jobs the business created during the preceding year that are attributable to investments that qualify under this section for a tax credit and the average wages paid by each job. An application that does not contain this information is incomplete and the applicant's registration may not be renewed until the information is provided.

(e) Revocation of Registration. — If the Securities Division of the Department of the Secretary of State finds that any of the information contained in an application of a business registered under this section is false, it shall revoke the registration of the business. The Secretary of State shall not revoke the registration of a business solely because it ceases business operations for an indefinite period of time, as long as the business renews its registration each year as required under G.S. 105-163.013.

(f) Transfer of Registration. — A registration as a qualified business venture or qualified grantee business may not be sold or otherwise transferred, except that if a qualified business venture or qualified grantee business enters into a merger, consolidation, or other similar transaction with another business and the surviving corporation would otherwise meet the criteria for being a qualified business venture or qualified grantee business, the surviving company retains the registration without further application to the Secretary of State. In such a case, the qualified business venture or qualified grantee business shall provide the Secretary of State with written notice of the merger, consolidation, or similar transaction and the name, address, and jurisdiction of incorporation of the surviving company.

(g) Report by Secretary of State. — The Secretary of State shall report to the Legislative Research Commission by October 1 of each year all of the businesses that have registered with the Secretary of State as qualified business ventures and qualified grantee businesses. The report shall include the name and address of each business, the location of its headquarters and principal place of business, a detailed description of the types of business in which it engages, whether the business is a minority business as defined in G.S. 143-128, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs. (1987, c. 852, s. 1; 1991, c. 637, s. 4; 1993, c. 443, ss. 4, 9; c. 485, s. 12; c. 553, s. 80.1; 1994, Ex. Sess., c. 14, s. 50; 1993 (Reg. Sess., 1994), c. 745, ss. 9, 10; 1996, 2nd Ex. Sess., c. 14, s. 7.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or re-

peal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are

not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.”

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective for investments made on or after January 1, 1997, deleted former subdivision (b)(1), regarding headquarters and principal business operations in North Carolina; deleted former subdivision (b)(2), regarding retention of headquarters and principal business operations in North Carolina; deleted “and that it has not moved its headquarters or principal business operations out of North Carolina” following “application” in the third paragraph of subsection (b); in subsection (c) deleted

“all of the following are true as of the date the business files the required application” from the end of the third sentence, deleted subdivisions (c)(1), regarding headquarters and principal business operations in North Carolina, deleted subdivision (c)(2), regarding retention of headquarters and principal business operations in North Carolina, deleted the subdivision (c)(3) designation, inserted “the Kenan Institute for Engineering, Technology and Science” in the first paragraph; and in subsection (g) deleted “odd-numbered year and by February 1 of each even-numbered” following “October 1 of each,” and inserted “the location of its headquarters and principal place of business.”

§ 105-163.014. (Repealed effective for investments made on or after January 1, 1999) Forfeiture of credit.

(a) Participation in Business. — A taxpayer who has received a credit under this Division for an investment in a qualified business venture or qualified grantee business forfeits the credit if, within three years after the investment was made, the taxpayer participates in the operation of the qualified business venture or qualified grantee business. For the purpose of this section, a taxpayer participates in the operation of a qualified business venture or a qualified grantee business if the taxpayer, the taxpayer’s spouse, parent, sibling, or child, or an employee of any of these individuals or of a business controlled by any of these individuals, provides services of any nature to the qualified business venture or qualified grantee business for compensation, whether as an employee, a contractor, or otherwise. However, a person who provides services to a qualified business venture or a qualified grantee business, whether as an officer, a member of the board of directors, or otherwise does not participate in its operation if the person receives as compensation only reasonable reimbursement of expenses incurred in providing the services, participation in a stock option or stock bonus plan, or both.

(b) False Application. — A taxpayer who has received a credit under this Division for an investment in a qualified business venture or a qualified grantee business forfeits the credit if the registration of the qualified business venture or qualified grantee business is revoked because information in the registration application was false at the time the application was filed with the Secretary of State.

(c) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 7, effective January 1, 1997.

(d) Transfer or Redemption of Investment. — A taxpayer who has received a credit under this Division for an investment in a qualified business venture or a qualified grantee business forfeits the credit in the following cases:

- (1) Within one year after the investment was made, the taxpayer transfers any of the securities received in the invest-

§ 105-163.014 has a delayed repeal date. See notes.

ment that qualified for the tax credit to another person or entity, other than in a transfer resulting from one of the following:

- a. The death of the taxpayer.
- b. A final distribution in liquidation to the owners of a taxpayer that is a corporation or other entity.
- c. A merger, consolidation, or similar transaction requiring approval by the shareholders of the qualified business venture or qualified grantee business under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

- (2) Within five years after the investment was made, the qualified business venture or qualified grantee business in which the investment was made makes a redemption with respect to the securities received in the investment.

In the event the taxpayer transfers fewer than all the securities in a manner that would result in a forfeiture, the amount of the credit that is forfeited is the product obtained by multiplying the aggregate credit attributable to the investment by a fraction whose numerator equals the number of securities transferred and whose denominator equals the number of securities received on account of the investment to which the credit was attributable. In addition, if the redemption amount is less than the amount invested by the taxpayer in the securities to which the redemption is attributable, the amount of the credit that is forfeited is further reduced by multiplying it by a fraction whose numerator equals the redemption amount and whose denominator equals the aggregate amount invested by the taxpayer in the securities involved in the redemption. The term "redemption amount" means all amounts paid that are treated as a distribution in part or full payment in exchange for securities under section 302(a) of the Code.

(e) **Effect of Forfeiture.** — A taxpayer who forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer who fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. (1987, c. 852, s. 1; 1991, c. 637, s. 5; 1993, c. 443, s. 5; 1996, 2nd Ex. Sess., c. 14, s. 7.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are

not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective for investments made on or after January 1, 1997, deleted former subsection (c), regarding location out-of-state; deleted "North Carolina Enterprise Corporation, a" preceding "qualified business venture" and made a related punctuation change in the introductory language of subsection

(d); and deleted "North Carolina Enterprise Corporation" and made a related punctuation change in subdivisions (d)(1)c. and (d)(2).

ARTICLE 4A.

Withholding of Income Taxes from Wages and Payment of Income Tax by Individuals.

§ 105-163.15. Failure by individual to pay estimated income tax; penalty.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 14, s. 25, provides: "Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under either of those statutes for a taxable year beginning on or after January 1, 1996, and before January 1, 1997, with respect to an underpayment of individual or corporation income tax to the extent the underpayment was created or increased by this act."

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the

State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 4C.

Filing of Declarations of Estimated Income Tax and Installment Payments of Estimated Income Tax by Corporations.

§ 105-163.41. Penalty for underpayment.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 14, s. 25, provides: "Notwithstanding G.S. 105-163.15 and G.S. 105-163.41, no addition to tax may be made under either of those statutes for a taxable year beginning on or after January 1, 1996, and before January 1, 1997, with respect to an underpayment of individual or corporation income tax to the extent the underpayment was created or increased by this act."

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the

State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

ARTICLE 5.

Schedule E. Sales and Use Tax.

DIVISION I. TITLE, PURPOSE AND DEFINITIONS.

§ 105-164.3. Definitions.

The following definitions apply in this Article, except when the context clearly indicates a different meaning:

- (1) "Business" shall include any activity engaged in by any person or caused to be engaged in by him with the object of gain, profit, benefit or advantage, either direct or indirect. The term "business" shall not be construed in this Article to include occasional and isolated sales or transactions by a person who does not hold himself out as engaged in business.
- (2) Reserved.
- (3) "Consumer" shall mean and include every person storing, using or otherwise consuming in this State tangible personal property purchased or received from a retailer either within or without this State.
- (4) "Cost price" means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, cash discounts, labor or service costs, transportation charges or any expenses whatsoever.
- (5) "Engaged in business" means maintaining, occupying or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business, for the selling or delivering of tangible personal property for storage, use or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, salesman, canvasser or solicitor operating in this State in such selling or delivering, and the fact that any corporate retailer, agent or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State is immaterial. It also means maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property for the purpose of lease or rental. It also means making a mail order sale, as defined in this section, if one of the conditions listed in G.S. 105-164.8(b) is met.
- (6) "Gross sales" means the sum total of all retail sales of tangible personal property as defined herein, whether for cash or credit without allowance for cash discount and without any deduction on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or any other expenses whatsoever and without any deductions of any kind or character except as provided in this Article.
- (7) "In this (the) State" means within the exterior limits of the State of North Carolina and includes all territory within

such limits owned by or ceded to the United States of America.

- (7a) "Lease or rental" means a transfer, for consideration, of the use but not the ownership of property to another for a period of time.
- (8) "Mail order sale" means a sale of tangible personal property, ordered by mail, telephone, computer link, or other similar method, to a purchaser who is in this State at the time the order is remitted, from a retailer who receives the order in another state and transports the property or causes it to be transported to a person in this State. It is presumed that a resident of this State who remits an order was in this State at the time the order was remitted.
- (8a) "Manufactured home" means a structure that is designed to be used as a dwelling and:
 - a. Is built on a permanent chassis;
 - b. Is transportable in one or more sections;
 - c. When transported, is at least eight feet wide or forty feet long; and
 - d. When erected on a site, has at least 320 square feet.
- (8b) "Motor vehicle" means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:
 - a. A moped as defined in G.S. 20-4.01(27)(d1).
 - b. Special mobile equipment as defined in G.S. 20-4.01(44).
 - c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
 - d. A farm tractor or other implement of husbandry.
 - e. A manufactured home, a mobile office, or a mobile classroom.
 - f. Road construction or road maintenance machinery or equipment.
- (9) "Net taxable sales" shall mean and include the gross retail sales of the business of the retailer taxed under this Article after deducting exempt sales and nontaxable sales.
- (10) "Nonresident retail or wholesale merchant" means a person who does not have a place of business in this State, is engaged in the business of acquiring, by purchase, consignment, or otherwise, tangible personal property and selling the property outside the State, and is registered for sales and use tax purposes in a taxing jurisdiction outside the State.
- (11) "Person" has the same meaning as in G.S. 105-228.90.
- (11a) Prepared food and drink. — Meals, food, and beverages to which a retailer has added value or whose state the retailer has altered (other than solely by cooling) by preparing, combining, dividing, heating, or serving, in order to make them available for immediate human consumption.
- (11b) "Prescription drug" means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement: "Caution: Federal law prohibits dispensing without prescription".
- (12) "Purchase" means acquired for a consideration whether
 - a. The acquisition was effected by a transfer of title or possession, or both, or a license to use or consume;
 - b. The transfer was absolute or conditional regardless of the means by which it was effected; and

c. The consideration is a price or rental in money or by way of exchange or barter.

It shall also include the procuring of a retailer to erect, install or apply tangible personal property for use in this State.

(13) "Retail" shall mean the sale of any tangible personal property in any quantity or quantities for any use or purpose on the part of the purchaser other than for resale.

(14) "Retailer" means and includes every person engaged in the business of making sales of tangible personal property at retail, either within or without this State, or peddling the same or soliciting or taking orders for sales, whether for immediate or future delivery, for storage, use or consumption in this State and every manufacturer, producer or contractor engaged in business in this State and selling, delivering, erecting, installing or applying tangible personal property for use in this State notwithstanding that said property may be permanently affixed to a building or realty or other tangible personal property. "Retailer" also means a person who makes a mail order sale, as defined in this section, if one of the conditions listed in G.S. 105-164.8(b) is met. Provided, however, that when in the opinion of the Secretary it is necessary for the efficient administration of this Article to regard any salesmen, solicitors, representatives, consignees, peddlers, truckers or canvassers as agents of the dealers, distributors, consignors, supervisors, employers or persons under whom they operate or from whom they obtain the tangible personal property sold by them regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, consignors, supervisors, employers or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers or persons as "retailers" for the purpose of this Article.

(15) "Sale" or selling. — The transfer of title or possession of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, for a consideration paid or to be paid.

The term includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work. The term also includes the furnishing or preparing for a consideration of any tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared. The term also includes a transaction in which the possession of the property is transferred but the seller retains title or security for the payment of the consideration.

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purposes of this Article the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer

purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property.

- (16) Except as provided in paragraph f., “sales price” means the total amount for which tangible personal property is sold including charges for any services that go into the fabrication, manufacture or delivery of such tangible personal property and that are a part of the sale valued in money whether paid in money or otherwise and includes any amount for which credit is given to the purchaser by the seller without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest charged, losses or any other expenses whatsoever. Provided, however, that where a manufacturer, producer or contractor erects, installs or affixes tangible personal property upon real property pursuant to a construction or performance-type contract with or for the benefit of the owner of such real property, the sales price shall be the cost of such property to the manufacturer, producer or contractor performing the contract. Provided, further:

- a. The cost for labor or services rendered in erecting, installing or applying property sold when separately charged shall not be included as a part of the “sales price”;
- b. Finance charges, service charges or interest from credit extended under conditional sales contracts or other conditional contracts providing for deferred payments of the purchase price shall not be considered a part of the “sales price” when separately charged;
- c. “Sales price” shall not include the amount of any tax imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or consumer except that any manufacturers’ or importers’ excise tax shall be included in the term.
- d. “Sales price” shall not include any amounts charged as deposits on beverage containers which are returnable to vendors for reuse and which amounts are refundable or creditable to vendees, whether or not said deposits are separately charged.
- e. “Sales price” shall not include amounts charged as deposits on aeronautic, automotive, industrial, marine and farm replacement parts which are returnable to vendors for rebuilding or remanufacturing and which amounts are refundable or creditable to vendees, whether or not such deposits are separately charged. This subsection shall not be construed to include tires and batteries.
- f. The sales price of tangible personal property sold through a coin-operated vending machine, other than closed-container soft drinks subject to excise tax under Article 2B of this Chapter or tobacco products, is considered to be fifty percent (50%) of the total amount for which the property is sold in the vending machine.

- (16a) "Secretary" means the Secretary of the North Carolina Department of Revenue.
- (16b) "State agency" means a unit of the executive, legislative, or judicial branch of State government, such as a department, a commission, a board, a council, or The University of North Carolina. The term does not include a local board of education.
- (17) "Storage" means and includes any keeping or retention in this State for any purpose by the purchaser thereof, except sale in the regular course of business, of tangible personal property purchased from a retailer.
- (18) "Use" means and includes the exercise of any right or power or dominion whatsoever over tangible personal property by a purchaser thereof and includes, but is not limited to, any withdrawal from storage, installation, affixation to real or personal property, exhaustion or consumption of tangible personal property by the owner or purchaser thereof, but shall not include the sale of tangible personal property in the regular course of business.
- (19) "Storage" and "Use"; Exclusion. — "Storage" and "use" do not include the keeping, retaining or exercising of any right or power over tangible personal property by the purchaser thereof for the original purpose of subsequently transporting it outside the State for use by said purchaser thereafter solely outside the State and which purpose is consummated, or for the purpose of being processed, fabricated or manufactured into, attached to or incorporated into, other tangible personal property to be transported outside the State and thereafter used by the purchaser thereof solely outside the State.
- (20) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, felt or touched or is in any other manner perceptible to the senses. The term "tangible personal property" shall not include stocks, bonds, notes, insurance or other obligations or securities, nor shall it include water delivered by or through main lines or pipes either for commercial or domestic use or consumption. The term includes all "canned" or prewritten computer programs, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, held, or existing for general or repeated sale, lease, or license to use or consume. The term does not include the design, development, writing, translation, fabrication, lease, license to use or consume, or transfer for a consideration of title or possession of a custom computer program, other than a basic operational program, either in the form of written procedures or in the form of storage media on which or in which the program is recorded, or any required documentation or manuals designed to facilitate the use of the custom computer program. The term also does not include access to a computer program or a database when the user of the computer program or database receives a separately stated fee or other charge for the access.

As used in this subdivision:

- a. "Basic operational program" or "control program" means a computer program that is fundamental and neces-

sary to the functioning of a computer. A basic operational program is that part of an operating system, including supervisors, monitors, executives, and control or master programs, which consists of the control program elements of that system. A control or master program, as opposed to a processing program, controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main storage, input/output devices, and processing programs. A processing program is used to develop and implement the specific applications the computer is to perform.

- b. "Computer program" means the complete plan for the solution of a problem, such as the complete sequence of automatic data-processing equipment instructions necessary to solve a problem, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.
 - c. "Custom computer program" means a computer program prepared to the special order of the customer. Custom computer programs include one of the following elements:
 - 1. Preparation or selection of the programs for the customer's use requires an analysis of the customer's requirements by the vendor; or
 - 2. The program requires adaptation by the vendor to be used in a particular make and model of computer utilizing a specified output device.
 - d. "Storage media" means punched cards, tapes, disks, diskettes, or drums.
- (21) "Taxpayer" means any person liable for taxes under this Article.
 - (22) "Use tax" means and includes the tax imposed by Part 3 in Division II of this Article.
 - (23) "Wholesale merchant" shall mean every person who engages in the business of buying or manufacturing any tangible personal property and selling same to registered retailers, wholesalers and nonresident retail or wholesale merchants for resale. It shall also include persons making sales of tangible personal property which are defined herein as wholesale sales. For the purposes of this Article any person, firm, corporation, estate or trust engaged in the business of manufacturing, producing, processing or blending any articles of commerce and maintaining a store or stores, warehouse or warehouses, or any other place or places, separate and apart from the place of manufacture or production, for the sale or distribution of its products (other than bakery products) to other manufacturers or producers, wholesale or retail merchants, for the purpose of resale shall be deemed a "wholesale merchant."
 - (24) "Wholesale sale" shall mean a sale of tangible personal property by a wholesale merchant to a manufacturer, or registered jobber or dealer, or registered wholesale or retail merchant, for the purpose of resale but does not include a sale to users or consumers not for resale.

(25) "Utility" means an electric power company, a gas company, or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a business entity that provides local, toll, or private telecommunications service as defined by G.S. 105-120(e) or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 1213, s. 1; 1967, c. 1110, s. 6; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 104, c. 275, s. 6; 1979, c. 48, s. 2; c. 71; c. 801, s. 72; 1983, c. 713, ss. 87, 88; 1983 (Reg. Sess., 1984), c. 1097, ss. 4, 5; 1985, c. 23; 1987, c. 27; c. 557, s. 3.1; c. 854, ss. 2, 3; 1987 (Reg. Sess., 1988), c. 1044, s. 3; c. 1096, ss. 1-3; 1989, c. 692, s. 3.2; 1989 (Reg. Sess., 1990), c. 813, s. 13; 1991, c. 45, s. 15; c. 79, ss. 1, 3; c. 689, s. 190.1(a); 1991 (Reg. Sess., 1992), c. 949, s. 3; 1993, c. 354, s. 16; c. 484, s. 1; c. 507, s. 1; 1995 (Reg. Sess., 1996), c. 649, s. 2; 1996, 2nd Ex. Sess., c. 14, ss. 13, 14.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

"Prosecutions for offenses committed

before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 649, s. 2, effective June 21, 1996, added subdivision (11b).

Session Laws 1996, Second Extra Session, c. 14, ss. 13 and 14, effective August 1, 1996, rewrote subdivision (15); and added subdivision (11a).

DIVISION II. TAXES LEVIED.

Part 1. Retail Sales Tax.

§ 105-164.4. Tax imposed on retailers.

(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

(1) The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.

(1a) The rate of two percent (2%) applies to the sales price of each manufactured home sold at retail, including all accessories attached to the manufactured home when it is delivered to the purchaser. The maximum tax is three hundred dollars (\$300.00) per article. Each section of a manufactured home that is transported separately to the site where it is to be erected is a separate article.

(1b) The rate of three percent (3%) applies to the sales price of each aircraft, boat, railway car, or locomotive sold at retail,

including all accessories attached to the item when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article.

- (1c) The rate of one percent (1%) applies to the sales price of the following articles:
- a. Horses or mules by whomsoever sold.
 - b. Semen to be used in the artificial insemination of animals.
 - c. Sales of fuel, other than electricity or piped natural gas, to farmers to be used by them for any farm purposes other than preparing food, heating dwellings and other household purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the one percent (1%) rate of tax imposed herein.
 - d. Sales of fuel, other than electricity or piped natural gas, to manufacturing industries and manufacturing plants for use in connection with the operation of such industries and plants other than sales of fuels to be used for residential heating purposes. The quantity of fuel purchased or used at any one time shall not in any manner be a determinative factor as to whether any sale or use of fuel is or is not subject to the rate of tax provided in this subdivision.
 - e. Sales of fuel, other than electricity or piped natural gas, to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.
 - f. Sales to freezer locker plants of wrapping paper, cartons and supplies consumed directly in the operation of such plant.

- (1d) The rate of one percent (1%) applies to the sales price of the following articles. The maximum tax is eighty dollars (\$80.00) per article.

- a. Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A "farmer" includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under this section.

The term "machines and machinery" as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use

defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

- b. Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term "manufacturing industries and plants" does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.
- c. Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.
- d. Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.
- e. Sales to freezer locker plants of machinery used in the direct operation of said freezer locker plant and of parts and accessories thereto.
- f. Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.
- g. Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.
- h. Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.
- i. Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and

become part of the sale of their products at wholesale or retail.

- (1e) The rate of three percent (3%) applies to the sales price of each mobile classroom or mobile office sold at retail, including all accessories attached to the mobile classroom or mobile office when it is delivered to the purchaser. The maximum tax is one thousand five hundred dollars (\$1,500) per article. Each section of a mobile classroom or mobile office that is transported separately to the site where it is to be placed is a separate article.
- (1f) The rate of two and eighty-three-hundredths percent (2.83%) applies to the sales price of electricity and piped natural gas described in this subdivision and measured by a separate meter or another device:
 - a. Sales of electricity and piped natural gas to farmers to be used by them for any farm purposes other than preparing food, heating dwellings, and other household purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.
 - b. Sales of electricity and piped natural gas to manufacturing industries and manufacturing plants for use in connection with the operation of the industries and plants other than sales of electricity and gas to be used for residential heating purposes. The quantity of electricity or gas purchased or used at any one time shall not be a determinative factor as to whether its sale or use is or is not subject to the rate of tax provided in this subdivision.
 - c. Sales of electricity and piped natural gas to commercial laundries or to pressing and dry-cleaning establishments for use in machinery used in the direct performance of the laundering or the pressing and cleaning service.
- (2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in the business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.
- (3) Operators of hotels, motels, tourist homes, tourist camps, and similar type businesses and persons who rent private residences and cottages to transients are considered retailers under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from the rental of any rooms, lodgings, or accommodations furnished to transients for a consideration. This tax does not apply to any private residence or cottage that is rented for less than 15 days in a calendar year or to any room, lodging, or accommodation supplied to the same person for a period of 90 or more continuous days.

As used in this subdivision, the term “persons who rent to transients” means (i) owners of private residences and cottages who rent to transients and (ii) rental agents, including “real estate brokers” as defined in G.S. 93A-2, who rent private residences and cottages to transients on behalf of the owners. If a rental agent is liable for the tax imposed by this subdivision, the owner is not liable.

- (4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from coin or token-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services.
- (4a) The rate of three percent (3%) applies to the gross receipts derived by a utility from sales of electricity, piped natural gas, or local telecommunications service as defined by G.S. 105-120(e), other than sales of electricity or piped natural gas subject to tax under another subdivision in this section. Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158. A person who operates a utility is considered a retailer under this Article.
- (4b) A person who sells tangible personal property at a flea market, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the flea market. A person who leases or rents space to others at a flea market may not lease or rent this space unless the retailer requesting to rent or lease the space shows the license or a copy of the license required by this Article or other evidence of compliance. A person who leases or rents space at a flea market shall keep records of retailers who have leased or rented space at the flea market. As used in this subdivision, the term “flea market” means a place where space is rented to a person for the purpose of selling tangible personal property.
- (4c) The rate of six and one-half percent (6 ½%) applies to the gross receipts derived from providing toll telecommunications services or private telecommunications services as defined by G.S. 105-120(e) that both originate from and terminate in the State and are not subject to the privilege tax under G.S. 105-120. Any business entity that provides these services is considered a retailer under this Article. This subdivision does not apply to telephone membership

corporations as described in Chapter 117 of the General Statutes.

- (5) The rate of three percent (3%) applies to the sales price of food that is not otherwise exempt pursuant to G.S. 105-164.13 but would be exempt pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

(b) The tax levied in this section shall be collected from the retailer and paid by him at the time and in the manner as hereinafter provided. Provided, however, that any person engaging or continuing in business as a retailer shall pay the tax required on the net taxable sales of such business at the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of tangible personal property in such form as may be accurately and conveniently checked by the Secretary or his duly authorized agent. If such records are not kept separately the tax shall be paid as a retailer on the gross sales of business and the exemptions and exclusions provided by this Article shall not be allowed. The tax levied in this section is in addition to all other taxes whether levied in the form of excise, license or privilege or other taxes.

(c) Any person who engages in any business for which a privilege tax is imposed by this Article shall apply for and obtain from the Secretary upon payment of fifteen dollars (\$15.00) a license to engage in and conduct the business upon the condition that the person shall pay the tax accruing to the State under this Article; the person shall thereby be duly licensed and registered to engage in the business.

A license issued under this subsection shall be a continuing license until it becomes void or is revoked for failure to comply with the provisions of this Article. A license issued under this subsection to a person, other than a person who makes only wholesale sales or only exempt sales, becomes void if, for a period of eighteen months, the license holder files no return or files returns showing no sales.

A retailer who sells tangible personal property at a flea market shall conspicuously display the retailer's sales tax license when making sales at the flea market. (1957, c. 1340, s. 5; 1959, c. 1259, s. 5; 1961, c. 826, s. 2; 1963, c. 1169, ss. 3, 11; 1967, c. 1110, s. 6; c. 1116; 1969, c. 1075, s. 5; 1971, c. 887, s. 1; 1973, c. 476, s. 193; c. 1287, s. 8; 1975, c. 752; 1977, c. 903; 1977, 2nd Sess., c. 1218; 1979, c. 17, s. 1; c. 22; c. 48, s. 1; c. 527, s. 1; c. 801, s. 73; 1981, c. 984, ss. 1, 2; 1981 (Reg. Sess., 1982), cc. 1207, 1273; 1983, c. 510; c. 713, ss. 89, 93; c. 805, ss. 1, 2; 1983 (Reg. Sess., 1984), c. 1065, ss. 1, 2, 4; c. 1097, ss. 6, 13; 1985, c. 704; 1985 (Reg. Sess., 1986), c. 925; c. 1005; 1987, c. 557, ss. 4, 5; c. 800, ss. 2, 3; c. 854, s. 1; 1987 (Reg. Sess., 1988), c. 1044, s. 4; 1989, c. 692, ss. 3.1, 3.3, 8.4(8); c. 770, s. 74.4; 1989 (Reg. Sess., 1990), c. 813, ss. 14, 15; 1991, c. 598, s. 5; c. 689, s. 311; c. 690, s. 1; 1993, c. 372, s. 1; c. 484, s. 2; 1995, c. 17, s. 6; c. 477, s. 1; 1996, 2nd Ex. Sess., c. 13, ss. 1.1, 9.1, 9.2.)

Editor's Note. —

Session Laws 1989, c. 692, s. 8.4, as amended by Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 7, provides that when contracts for all projects specified in Article 14 of Chapter 136 have been let and sufficient revenue has been accumu-

lated to pay the contracts, the Secretary of Transportation shall certify this occurrence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State, which is not expected to happen for some years. Proceeds of

bonds and notes issued pursuant to the State Highway Bond Act of 1996 shall not be included as revenues accumulated to pay the contracts for projects specified in Article 14 of Chapter 136 of the General Statutes. Section 8.4(8) of c. 692 amends subdivision (a)(1a) of this section by inserting "or motor vehicle" following "manufactured home" in two places in the first sentence, effective the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between that date and the first day of the following quarter, in which case, the amendment will become effective the first day of the second calendar quarter following the date the letter is sent.

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Ses-

sion, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. —

Session Laws 1996, Second Extra Session, c. 13, s. 1.1, effective January 1, 1997, and applicable to sales made on or after that date, added subdivision (a)(5).

Session Laws 1996, Second Extra Session, c. 13, ss. 9.1 and 9.2, effective August 1, 1996, and applicable to sales made on or after that date, added subdivision (a)(1f); and added "other than sales of electricity or piped natural gas subject to tax under another subdivision in this section" to the end of the first sentence in subdivision (a)(4a).

Part 3. Use Tax.

§ 105-164.6A. Voluntary collection of use tax by sellers.

(a) **Voluntary Collection Agreements.** — The Secretary may enter into agreements with sellers pursuant to which the seller agrees to collect and remit on behalf of its customers State and local use taxes due on items of tangible personal property the seller sells. For the purpose of this section, a seller is a person who is engaged in the business of selling tangible personal property for use in this State and who does not have sufficient nexus with this State to be required to collect use tax on the sales.

(b) **Mandatory Provisions.** — The agreements must contain the following provisions:

- (1) The customer may elect to pay the use tax directly to the Secretary in accordance with law rather than to the seller.
- (2) A customer's payment of a use tax to the seller relieves the customer of liability for the use tax.
- (3) The seller must remit all use taxes it collects from customers on or before the due date specified in the agreement, which may not be later than 31 days after the end of a quarter or other collection period.
- (4) A seller who fails to remit use taxes collected on behalf of its customers by the due date specified in the agreement is subject to the interest and penalties provided in Article 9 of this Chapter with respect to the taxes to the same extent as if the seller were a retailer and were required to collect use taxes under this Article.

(c) **Optional Provisions.** — The agreements may contain the following provisions:

- (1) The seller will collect the use tax only on items that are subject to the general rate of tax.

- (2) The seller will collect local use taxes only to the extent they are at the same rate in every unit of local government in the State.
- (3) The seller will remit the tax and file reports in the form prescribed by the Secretary.
- (4) Other provisions establishing the types of transactions on which the seller will collect tax and prescribing administrative procedures and requirements. (1996, 2nd Ex. Sess., c. 14, s. 11.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 27, made this section effective August 1, 1996.

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any

refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Part 4. General Provisions.

§ 105-164.12B. Bundled transactions.

(a) **Bundled Transaction Defined.** — A bundled transaction is a transaction in which all of the following conditions are met:

- (1) A seller transfers an item of tangible personal property to a consumer on the condition that the consumer enter into an agreement to purchase services on an ongoing basis for a minimum period of at least six months.
- (2) The agreement requires the consumer to pay a cancellation fee to the service provider if the consumer cancels the contract for services within the minimum period.
- (3) For the item transferred, the seller:
 - a. Does not charge the consumer; or
 - b. Charges the consumer a price that, after any discount or rebate the seller gives the consumer, is below the cost price the seller paid for the item.

(b) **Bundled Transaction Is a Sale; Sales Price.** — If a seller transfers an item of tangible personal property as part of a bundled transaction, a sale has occurred, and the sales price of the item is presumed to be the retail price at which the item would sell if no agreement for services were entered into. Part of this price may be paid by the consumer at the time of the transfer; the remainder of the price is considered paid as part of the price to be paid for the services contracted for. Sales tax is due on any part of the price paid by the consumer at the time of the transfer.

(c) **No Additional Sales Tax if Services Taxed.** — If the services for which the consumer was required to contract are subject to services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then no additional sales tax is due on the transfer. However, if the consumer cancels the contract for services before the expiration of the minimum period, sales tax applies to the cancellation fee paid by the consumer.

(d) **Additional Sales Tax if Services Not Taxed.** — If the services for which the consumer was required to contract are not subject to

services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then sales tax is due at the time of the transfer on the remainder of the sales price not paid at that time.

(e) **Services Taxes Defined.** — For the purpose of this section, the term “services taxes” means any combination of State franchise tax on gross receipts, State sales tax, or local sales tax levied on the sale of or gross receipts from the services.

(f) **Determination of Cost Price.** — For the purpose of this section, the cost price a seller paid for an item is presumed to be no greater than the price the seller paid for the same model within 12 months before the bundled transaction, as shown on the seller’s invoices. (1996, 2nd Ex. Sess., c. 13, s. 5.1.)

Editor’s Note. — Session Laws 1996, Second Extra Session, c. 13, s. 10.2(5), made this section effective on the earliest date practicable (November 1, 1996), and provides that the earliest date practicable is considered to be the first day of the third month following the ratification of the act (August 2, 1996), and applicable to sales made on or after the effective date.

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee

Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.”

DIVISION III. EXEMPTIONS AND EXCLUSIONS.

§ 105-164.13. Retail sales and use tax.

The sale at retail, the use, storage or consumption in this State of the following tangible personal property is specifically exempted from the tax imposed by this Article:

Agricultural Group.

- (1) Commercial fertilizer on which the inspection tax is paid and lime and land plaster used for agricultural purposes whether the inspection tax is paid or not.
- (2) Seeds.
- (2a) Any of the following when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes:
 - a. Remedies, vaccines, medications, litter materials, and feeds for animals.
 - b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
 - c. Defoliants for use on cotton or other crops.
 - d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.
- (3) Products of forests and mines in their original or unmanufactured state when such sales are made by the producer in the capacity of producer.
- (4) Cotton, tobacco, peanuts or other farm products sold to manufacturers for further manufacturing or processing.

- (4a) Baby chicks and poults sold for commercial poultry or egg production.
- (4b) Products of a farm sold in their original state by the producer of the products if the producer is not primarily a retail merchant and ice used to preserve agriculture, aquaculture and commercial fishery products until the products are sold at retail.
- (4c) Any of the following:
 - a. Commercially manufactured facilities to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities.
 - b. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities.
 - c. Commercially manufactured equipment, and parts and accessories for the equipment, used in a facility that is exempt from tax under this subdivision or in an enclosure or a structure whose building materials are exempt from tax under this subdivision.
- (4d) The lease or rental of burlap tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse.

Industrial Group.

- (5) Manufactured products produced and sold by manufacturers or producers to other manufacturers, producers, or registered wholesale or retail merchants, for the purpose of resale except as modified by Division I, G.S. 105-164.3, subdivision (23). Provided, however, this exemption shall not extend to or include retail sales to users or consumers not for resale.
- (6) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1068, s. 1.
- (7) Sales of products of waters in their original or unmanufactured state when such sales are made by the producer in the capacity of producer. Fish and seafoods are likewise exempt when sold by the fisherman in that capacity.
- (8) Sales of tangible personal property to a manufacturer which enters into or becomes an ingredient or component part of tangible personal property which is manufactured.
- (8a) Sales to a small power production facility, as defined in 16 U.S.C. § 796(17)(A), of fuel used by the facility to generate electricity.
- (9) Sales of boats, fuel oil, lubricating oils, machinery, equipment, nets, rigging, paints, parts, accessories, and supplies to persons for use by them principally in commercial fishing operations within the meaning of G.S. 113-152, except when the property is for use by persons principally to take fish for recreation or personal use or consumption. As used in this subdivision, "fish" is defined as in G.S. 113-129(7).

- (10) Sales to commercial laundries or to pressing and dry cleaning establishments of articles or materials used for the identification of garments being laundered or dry cleaned, wrapping paper, bags, hangers, starch, soaps, detergents, cleaning fluids and other compounds or chemicals applied directly to the garments in the direct performance of the laundering or the pressing and cleaning service.

Motor Fuels Group.

- (11) Motor fuel subject to tax under Article 36C of this Chapter and alternative fuel subject to tax under Article 36D of this Chapter, regardless of whether those Articles exempt the fuel from tax or allow a refund of tax paid on the fuel.
- (11a) Sales of diesel fuel to railroad companies for use in rolling stock other than motor vehicles. The definitions in G.S. 105-333 apply in this subdivision.

Medical Group.

- (12) Therapeutic, prosthetic, or artificial devices, such as pulmonary respirators or medical beds, that are designed for individual personal use to correct or alleviate physical illness, disease, or incapacity and that are sold on the written prescription of a physician, dentist, or other professional person licensed to prescribe, and crutches, artificial limbs, artificial eyes, hearing aids, false teeth, eyeglasses ground on prescription of a physician or an optometrist, and orthopedic appliances designed to be worn by the purchaser or user.
- (13) Medicines sold on prescription of physicians, dentists, or veterinarians; insulin whether or not sold on prescription.
- (13a) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 16, effective August 1, 1996.
- (13b) Prescription drugs distributed free of charge by the manufacturer, including the constituent elements and ingredients used to produce the drugs, the packaging materials, and any instructions or information about the product included in the package with the drugs.
- (14) Public school books on the adopted list, the selling price of which is fixed by State contract.
- (14a) Printed material which is sold by a printer to a purchaser within or without this State, when such printed material is delivered in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this State, if the purchaser does not thereafter use the printed material in this State.

Transactions Group.

- (15) Accounts of purchasers, representing taxable sales, on which the tax imposed by this Article has been paid, that are found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross sales, provided, however, they must be added to gross sales if afterwards collected.

- (16) Sales of any of the following articles:
- a. A used article taken in trade, or a series of trades, as a credit or part payment on the sale of a new article if tax is paid on the sales price of the new article. "New article" means the original stock in trade of the merchant and is not limited to a newly manufactured article.
 - b. An article repossessed by the vendor if tax was paid on the sales price of the article.
- (17) Sales which a state would be without power to tax under the limitations of the Constitution or laws of the United States or under the Constitution of this State.

Unclassified Group.

- (18) Funeral expenses, including coffins and caskets, not to exceed one thousand five hundred dollars (\$1,500). All other funeral expenses, including gross receipts for services rendered, shall be taxable at the general rate of tax set in G.S. 105-164.4. However, "services rendered" shall not include those services which have been taxed pursuant to G.S. 105-164.4(4), or to those services performed by any beautician, cosmetologist, hairdresser or barber employed by or at the specific direction of the family or personal representative of a deceased; and "funeral expenses" and "services rendered" shall not include death certificates procured by or at the specific direction of the family or personal representative of a deceased. Where coffins, caskets or vaults are purchased direct and a separate charge is paid for services, the provisions of this subdivision shall apply to the total for both.
- (19) Repealed by Session Laws 1991, c. 618, s. 1.
- (20) Sales by blind merchants operating under supervision of the Department of Human Resources.
- (21) The lease or rental of motion picture films used for exhibition purposes where the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to said business of the lessee.
- (22) The lease or rental of films, motion picture films, transcriptions and recordings to radio stations and television stations operating under a certificate from the Federal Communications Commission.
- (23) Sales of wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, including paper cups, napkins and drinking straws and like articles sold to manufacturers, producers and retailers, when such materials are used for packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.
- (24) Sales of fuel and other items of tangible personal property for use or consumption by or on ocean-going vessels which ply the high seas in interstate or foreign commerce in the

transport of freight and/or passengers for hire exclusively, when delivered to an officer or agent of such vessel for the use of such vessel; provided, however, that sales of fuel and other items of tangible personal property made to officers, agents, members of the crew or passengers of such vessels for their personal use shall not be exempted from payment of the sales tax.

(25) Sales by merchants on the Cherokee Indian Reservation when such merchants are authorized to do business on the Reservation and are paying the tribal gross receipts levy to the Tribal Council.

(26) Food sold not for profit by public or private school cafeterias within school buildings during the regular school day.

(26a) Food sold not for profit by a public school cafeteria to a child day care center that participates in the Child and Adult Care Food Program of the Department of Public Instruction.

(27) Meals and food products served to students in dining rooms regularly operated by State or private educational institutions or student organizations thereof.

(28) Sales of newspapers by newspaper street vendors and by newspaper carriers making door-to-door deliveries and sales of magazines by magazine vendors making door-to-door sales.

(29) Sales to the North Carolina Museum of Art of paintings and other objects or works of art for public display, the purchases of which are financed in whole or in part by gifts or donations.

(29a) Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 5, effective June 21, 1996.

(30) Sales from vending machines when sold by the owner or lessee of said machines at a price of one cent (1¢) per sale.

(31) Sales of meals not for profit to elderly and incapacitated persons by charitable or religious organizations not operated for profit which are entitled to the refunds provided by G.S. 105-164.14(b), when such meals are delivered to the purchasers at their places of abode.

(31a) Food sold by a church or religious organization not operated for profit when the proceeds of the sales are actually used for religious activities.

(31b) Repealed by Session Laws 1996, Second Extra Session, c. 14, s. 16, effective August 1, 1996.

(32) Sales of motor vehicles, the sale of a motor vehicle body to be mounted on a motor vehicle chassis when a certificate of title has not been issued for the chassis, and the sale of a motor vehicle body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can mount the body on the chassis.

(33) Tangible personal property purchased solely for the purpose of export to a foreign country for exclusive use or consumption in that or some other foreign country, either in the direct performance or rendition of professional or commercial services, or in the direct conduct or operation of a trade or business, all of which purposes are actually consummated, or purchased by the government of a foreign country for export which purpose is actually consummated.

“Export” shall include the acts of possessing and marshaling such property, by either the seller or the purchaser, for transportation to a foreign country, but shall not include devoting such property to any other use in North Carolina or the United States. “Foreign country” shall not include any territory or possession of the United States.

In order to qualify for this exemption, an affidavit of export indicating compliance with the terms and conditions of this exemption, as prescribed by the Secretary of Revenue, must be submitted by the purchaser to the seller, and retained by the seller to evidence qualification for the exemption.

If the purposes qualifying the property for exemption are not consummated, the purchaser shall be liable for the tax which was avoided by the execution of the aforesaid affidavit as well as for applicable penalties and interest and the affidavit shall contain express provision that the purchaser has recognized and assumed such liability.

The principal purpose of this exemption is to encourage the flow of commerce through North Carolina ports that is now moving through out-of-state ports. However, it is not intended that property acquired for personal use or consumption by the purchaser, including gifts, shall be exempt hereunder.

- (34) Sales of items by a nonprofit civic, charitable, educational, scientific or literary organization when the net proceeds of the sales will be given or contributed to the State of North Carolina or to one or more of its agencies or instrumentalities, or to one or more nonprofit charitable organizations, one of whose purposes is to serve as a conduit through which such net proceeds will flow to the State or to one or more of its agencies or instrumentalities.
- (35) Sales by a nonprofit civic, charitable, educational, scientific, literary or fraternal organization continuously chartered or incorporated within North Carolina for at least two years when such sales are conducted only upon an annual basis for the purpose of raising funds for its activities, and when the proceeds thereof are actually used for such purposes; provided, however, that no such sale shall be exempt if not actually consummated within 60 days after the first solicitation of any sale made during said organization's annual sales period.
- (36) Advertising supplements and any other printed matter ultimately to be distributed with or as part of a newspaper.
- (37) Spirituous liquor. This exemption does not prohibit the levy of sales and use taxes on mixed beverages. As used in this subdivision, the terms “spirituous liquor” and “mixed beverage” have the same meanings as in G.S. 18B-101(14) and G.S. 18B-101(10) respectively.
- (38) Food and other items lawfully purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51, and supplemental foods lawfully purchased with a food instrument issued under the Special Supplemental Food Program, 42 U.S.C. § 1786, and supplemental foods purchased for direct distribution by the Special Supplemental Food Program.

- (39) Sales of paper, ink, and other tangible personal property to commercial printers and commercial publishers for use as ingredient or component parts of free circulation publications, and sales by printers of free circulation publications to the publishers of these publications. As used in this subdivision, the term "free circulation publications" means shoppers' guides that:

- (1) Are published on a periodic basis at recurring intervals;
- (2) Are mailed or are distributed house-to-house, by street distributors, in racks, or in any other manner at other locations without charge to the recipient;
- (3) Contain advertising of a general nature; and
- (4) Make space available to all advertisers for the purpose of inducing readers to purchase the goods and services of the advertisers.

The term does not include house organs or trade, professional, or similar types of publications. The ratio of news to advertising in a publication is not a factor in determining whether the publication is a free circulation publication.

- (40) Sales to the Department of Transportation.
- (41) Sales of mobile classrooms to local boards of education or to local boards of trustees of community colleges.
- (42) Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes. (1957, c. 1340, s. 5; 1959, c. 670; c. 1259, s. 5; 1961, c. 826, s. 2; cc. 1103, 1163; 1963, c. 1169, ss. 7-9; 1965, c. 1041; 1967, c. 756; 1969, c. 907; 1971, c. 990; 1973, c. 476, s. 143; c. 708, s. 1; cc. 1064, 1076; c. 1287, s. 8; 1975, 2nd Sess., c. 982; 1977, c. 771, s. 4; 1977, 2nd Sess., c. 1219, s. 43.6; 1979, c. 46, ss. 1, 2; c. 156, s. 1; c. 201; c. 625, ss. 1, 2; c. 801, ss. 74, 75; 1979, 2nd Sess., c. 1099, s. 1; 1981, cc. 14, 207, 982; 1983, c. 156; c. 570, s. 21; c. 713, ss. 91, 92; c. 873; c. 887; 1983 (Reg. Sess., 1984), c. 1071, s. 1; 1985, c. 114, s. 4; c. 555; c. 656, ss. 24, 25; 1985 (Reg. Sess., 1986), c. 953; c. 973; c. 982, s. 2; 1987, c. 800, s. 1; 1987 (Reg. Sess., 1988), c. 937; 1989, c. 692, ss. 3.5, 3.6; c. 748, s. 1; 1989 (Reg. Sess., 1990), c. 989; c. 1060; c. 1068, ss. 1, 2; 1991, c. 45, s. 17; c. 79, s. 2; c. 618, s. 1; c. 689, s. 314; 1991 (Reg. Sess., 1992), c. 931, ss. 1, 2; c. 935, s. 1; c. 940, s. 1; c. 949, s. 1; c. 1007, s. 44; 1993, c. 484, s. 3; c. 513, s. 11; 1993 (Reg. Sess., 1994), c. 739, s. 1; 1995, c. 390, s. 14; c. 451, s. 1; c. 477, ss. 2, 3; 1995 (Reg. Sess., 1996), c. 646, ss. 4, 5; c. 649, s. 1; 1996, 2nd Ex. Sess., c. 14, ss. 15, 16.)

Editor's Note. —

Session Laws 1989, c. 692, s. 8.4, as amended by Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 7, provides that when contracts for all projects specified in Article 14 of Chapter 136 have been let and sufficient revenue has been accumulated to pay the contracts, the Secretary of Transportation shall certify this occur-

rence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State, which is not expected to happen for some years. Proceeds of bonds and notes issued pursuant to the State Highway Bond Act of 1996 shall not be included as revenues accumulated to pay the contracts for projects specified

in Article 14 of Chapter 136 of the General Statutes. Section 8.4(a) of c. 692 amends subsection (32) of this section by deleting "Sales of motor vehicles" at the beginning, effective the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between that date and the first day of the following quarter, in which case, the amendment will become effective the first day of the second calendar quarter following the date the letter is sent.

Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

"Prosecutions for offenses committed before the effective date of this act are

not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. —

Session Laws 1995 (Reg. Sess., 1996), c. 646, ss. 4 and 5, effective June 21, 1996, substituted "on animals or plants, as appropriate, held or produced for commercial purposes" for "in the commercial production of animals or plants, as appropriate" in subdivision (2a); and repealed subdivision (29a) regarding sales to State agencies of works of art for a State building.

Session Laws 1995 (Reg. Sess., 1996), c. 649, s. 1, effective June 21, 1996, added subdivision (13b).

Session Laws 1996, Second Extra Session, c. 14, ss. 15 and 16, effective August 1, 1996, added subdivision (42); and repealed subdivision (13a), regarding medicines sold on prescription and insulin, and subdivision (31b), regarding food donated to nonprofit organizations.

§ 105-164.14. Certain refunds authorized.

(a) **Interstate Carriers. —** An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An "interstate carrier" is a person who is engaged in transporting persons or property in interstate commerce for compensation, is subject to regulation by, and to the jurisdiction of, the Interstate Commerce Commission or the United States Department of Transportation, and is required by either federal agency to keep records according to generally accepted accounting principles (GAAP) or, in the case of a small certificated air carrier, to make reports of financial and operating statistics. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

- (1) A list identifying the lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.
- (2) The purchase price of the items listed in subdivision (1) of this subsection.
- (3) The sales and use taxes paid in this State on the listed items.
- (4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.
- (5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of

the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period.

(b) **Nonprofit Entities and Hospital Drugs.** — A nonprofit entity included in the following list is allowed a semiannual refund of sales and use taxes paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property for use in carrying on the work of the nonprofit entity:

- (1) Hospitals not operated for profit, including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E of the General Statutes.
- (2) Educational institutions not operated for profit.
- (3) Churches, orphanages, and other charitable or religious institutions and organizations not operated for profit.
- (4) Homes for the aged, sick, or infirm whose property is excluded from property tax under G.S. 105-275(32).

Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity.

A hospital that is not allowed a refund under this subsection of sales and use taxes paid on its direct purchases of tangible personal property is allowed a semiannual refund of sales and use taxes paid by it on medicines and drugs purchased for use in carrying out its work.

The refunds allowed under this subsection for certain nonprofit entities and for medicines and drugs purchased by hospitals do not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c).

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15.

(c) **Certain Governmental Entities.** — A governmental entity listed in this subsection is allowed an annual refund of sales and use

tax paid by it under this Article, except under G.S. 105-164.4(a)(4a) and G.S. 105-164.4(a)(4c), on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability incurred on direct purchases by the governmental entity for the purpose of this subsection. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

- (1) A county.
- (2) A city as defined in G.S. 160A-1.
- (2a) A consolidated city-county as defined in G.S. 160B-2.
- (3) A metropolitan sewerage district or a metropolitan water district in this State.
- (4) A water and sewer authority created under Chapter 162A of the General Statutes.
- (5) A lake authority created by a board of county commissioners pursuant to an act of the General Assembly.
- (6) A sanitary district.
- (7) A regional solid waste management authority created pursuant to G.S. 153A-421.
- (8) An area mental health, developmental disabilities, and substance abuse authority, other than a single-county area authority, established pursuant to Article 4 of Chapter 122C of the General Statutes.
- (9) A district health department.
- (10) A regional council of governments created pursuant to G.S. 160A-470.
- (11) A regional planning and economic development commission or a regional economic development commission created pursuant to Chapter 158 of the General Statutes.
- (12) A regional planning commission created pursuant to G.S. 153A-391.
- (13) A regional sports authority created pursuant to G.S. 160A-479.
- (14) A public transportation authority created pursuant to Article 25 of Chapter 160A of the General Statutes.
- (14a) A facility authority created pursuant to Part 4 of Article 20 of Chapter 160A of the General Statutes.
- (15) A regional public transportation authority created pursuant to Article 26 of Chapter 160A of the General Statutes.
- (16) A local airport authority that was created pursuant to a local act of the General Assembly and has at least one of the following characteristics:
 - a. It has all of the rights of a municipality.
 - b. A local act of the General Assembly declares it to be a municipality.
 - c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.
- (17) A joint agency created by interlocal agreement pursuant to G.S. 160A-462 to operate a public broadcasting television station.

- (18) The North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes.
- (19) The North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes.
- (20) A constituent institution of The University of North Carolina, but only with respect to sales and use tax paid by it for tangible personal property acquired by it through the expenditure of contract and grant funds.
- (21) The University of North Carolina Hospitals at Chapel Hill.

(d) **Penalties for Late Applications.** — Refunds made pursuant to applications filed after the dates specified in subsections (b) and (c) above are subject to the following penalties for late filing: applications filed within 30 days after the due date, twenty-five percent (25%); applications filed after 30 days but within six months after the due date, fifty percent (50%). Refunds applied for more than six months after the due date are barred.

(e) **State Agencies.** — The State is allowed quarterly refunds of local sales and use taxes paid by a State agency on direct purchases of tangible personal property and local sales and use taxes paid indirectly by the State agency on building materials, supplies, fixtures, and equipment that become a part of or annexed to a building or structure that is owned or leased by the State agency and is being erected, altered, or repaired for use by the State agency. This subsection does not apply to purchases for which a State agency is allowed a refund under subsection (c) of this section.

A person who pays local sales and use taxes on building materials or other tangible personal property for a State building project shall give the State agency for whose project the property was purchased a signed statement containing all of the following information:

- (1) The date the property was purchased.
- (2) The type of property purchased.
- (3) The project for which the property was used.
- (4) If the property was purchased in this State, the county in which it was purchased.
- (5) If the property was not purchased in this State, the county in which the property was used.
- (6) The amount of sales and use taxes paid.

If the property was purchased in this State, the person shall attach a copy of the sales receipt to the statement. A State agency to whom a statement is submitted shall verify the accuracy of the statement.

Within 15 days after the end of each calendar quarter, every State agency shall file with the Secretary a written application for a refund of taxes to which this subsection applies paid by the agency during the quarter. The application shall contain all information required by the Secretary. The Secretary shall credit the local sales and use tax refunds directly to the General Fund.

(f) **(See editor's note)** **Information to Counties.** — Upon written request of a county, the Secretary shall, within 30 days after the request, provide the chair of the board of county commissioners a list of each claimant that has, within the past 12 months, received a refund under subsection (b) or (c) of this section of at least one thousand dollars (\$1,000) of tax paid to the county. The list shall include the name and address of each claimant and the amount of

the refund it has received from that county. Upon written request of a county, a claimant that has received a refund under subsection (b) or (c) of this section shall provide the chair of the board of county commissioners a copy of the request for the refund and any supporting documentation requested by the county to verify the request. Information provided to a county under this subsection is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1. If a claimant determines that a refund it has received under subsection (b) or (c) of this section is incorrect, it shall file an amended request for the refund. (1957, c. 1340, s. 5; 1961, c. 826, s. 2; 1963, cc. 169, 1134; 1965, c. 1006; 1967, c. 1110, s. 6; 1969, c. 1298, s. 1; 1971, cc. 89, 286; 1973, c. 476, s. 193; 1977, c. 895, s. 1; 1979, c. 47; c. 801, ss. 77, 79-82; 1983, c. 594, s. 1; c. 891, s. 13; 1983 (Reg. Sess., 1984), c. 1097, s. 7; 1985, cc. 431, 523; 1985 (Reg. Sess., 1986), c. 863, s. 5; 1987, c. 557, ss. 8, 9; c. 850, s. 16; 1987 (Reg. Sess., 1988), c. 1044, s. 5; 1989, c. 168, s. 5; c. 251; c. 780, s. 1.1; 1989 (Reg. Sess., 1990), c. 936, s. 4; 1991, c. 356, s. 1; c. 689, s. 190.1(b); 1991 (Reg. Sess., 1992), c. 814, s. 1; c. 917, s. 1; c. 1030, s. 25; 1995, c. 17, s. 8; c. 21, s. 1; c. 458, s. 7; c. 461, s. 13; c. 472, s. 1; 1995 (Reg. Sess., 1996), c. 646, s. 6; 1996, 2nd Ex. Sess., c. 18, s. 15.7(a).)

Editor's Note. —

Session Laws 1995, c. 21, s. 3, provides: "Notwithstanding the provisions of G.S. 105-164.14(f), as added by this act, for requests received under that subsection before July 1, 1996, the Secretary of Revenue is not required to provide the requested list until 90 days after receiving the request."

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Ses-

sion, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. —

Session Laws 1995 (Reg. Sess., 1996), c. 646, s. 6, effective June 21, 1996, substituted "as defined in G.S. 160B-2" for "created pursuant to Article 2 or Article 5 of Chapter 160B of the General Statutes" in subdivision (c)(2a).

Session Laws 1996, Second Extra Session, c. 18, s. 15.7, effective January 1, 1997, and applicable to taxes paid on or after that date, added subdivision (c)(21).

CASE NOTES

Residential Care Facility for the Elderly. — The term "charitable organization" easily accommodated the nature of plaintiffs' residential care facility for the elderly; plaintiffs were engaged in a humane and philanthropic endeavor to aid and assist the rapidly growing class

of elderly citizens of this State, and their activities benefited the larger community which only recently had come to realize the problems associated with an aging population. *Southminster, Inc. v. Justus*, 119 N.C. App. 669, 459 S.E.2d 793 (1995).

ARTICLE 5A.

North Carolina Highway Use Tax.

§ 105-187.1. Definitions.

Editor's Note. —

Session Laws 1989, c. 692, s. 8.4, as amended by Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 7, provides that

when contracts for all projects specified in Article 14 of Chapter 136 have been let and sufficient revenue has been accumulated to pay the contracts, the Secretary

of Transportation shall certify this occurrence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State, which contingency is not expected to occur until some years after the date of enactment. Proceeds of bonds and notes issued pursuant to the State Highway Bond Act of 1996 shall not be included as revenues accumulated to pay the contracts for projects specified in

Article 14 of Chapter 136 of the General Statutes. This Article shall be repealed effective the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between that date and the first day of the following quarter, in which case, the repeal will become effective the first day of the second calendar quarter following the date the letter is sent.

ARTICLE 6.

Schedule G. Gift Taxes.

§ 105-188. Gift taxes; classification of beneficiaries; exemptions; rates of tax.

(a) State gift taxes, as hereinafter prescribed, are hereby levied upon the shares of the respective beneficiaries in all property within the jurisdiction of this State, real, personal and mixed, and any interest therein which shall in any one calendar year pass by gift made after March 24, 1939.

(b) The taxes shall apply whether the gift is in trust or otherwise and whether the gift is direct or indirect. In the case of a gift made by a nonresident, the taxes shall apply only if the property is within the jurisdiction of this State. The taxes shall not apply to gifts made prior to March 24, 1939.

(c) The tax shall not apply to the passage of property in trust where the power to revest in the donor title to such property is vested in the donor, either alone or in conjunction with any person not having substantial adverse interest in the disposition of such property or the income therefrom, but the relinquishment or termination of such power (other than by the donor's death) shall be considered to be a passage from the donor by gift of the property subject to such power, and any payment of the income therefrom to a beneficiary other than the donor shall be considered to be a passage by donor of such income by gift.

(d) Gifts not exceeding a total value of ten thousand dollars (\$10,000) made to any one donee in a calendar year are not taxable under this Article. When gifts exceeding a total value of ten thousand dollars (\$10,000) are made to any one donee in a calendar year, only the portion of the gifts exceeding ten thousand dollars (\$10,000) in value is taxable under this Article. This exclusion does not apply to gifts of future interests in property. For the purposes of determining the exclusion herein provided, no part of a gift to an individual, or in trust for an individual, who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property if the property and the income therefrom may be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and will to the extent not so expended pass to the donee on his attaining the age of 21 years, and in the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment.

When a gift is made by one spouse to a person other than the donor's spouse, the donor may claim both the donor's annual exclusion and the spouse's annual exclusion provided that both spouses consent and both spouses are residents of this State when the gift is made. Consent to share annual gift tax exclusions shall be made in writing on a timely filed gift tax return. Once given, consent to share annual exclusions is irrevocable.

(e) The tax shall be based on the aggregate sum of the net gifts made by the donor to the same donee, and shall be computed as follows:

- (1) Determine the aggregate sum of the net gifts to the donee for the calendar year and the net gifts to the same donee for each of the preceding calendar years since January 1, 1948.
- (2) Compute the tax upon said aggregate sum by applying the rates hereinafter set out.
- (3) From the tax thus computed, deduct the total gift tax, if any, computed with respect to gifts to the same donee in any prior year or years since January 1, 1948. The sum thus ascertained shall be the gift tax due.

The term "net gifts" shall mean the sum of the gifts made by a donor to the same donee during any stated period of time in excess of the annual exclusion and the applicable specific exemption.

(f) The rates of tax, which are based on the relationship between the donor and the donee, shall be as follows:

- (1) Where the donee is the lineal issue, lineal ancestor, adopted child, or stepchild of the donor (for each one hundred dollars (\$100.00) or fraction thereof):

First \$	10,000 above exemption	1 percent
Over \$	10,000 and to \$ 25,000	2 percent
Over \$	25,000 and to \$ 50,000	3 percent
Over \$	50,000 and to \$ 100,000	4 percent
Over \$	100,000 and to \$ 200,000	5 percent
Over \$	200,000 and to \$ 500,000	6 percent
Over \$	500,000 and to \$1,000,000	7 percent
Over \$	\$1,000,000 and to \$1,500,000	8 percent
Over \$	\$1,500,000 and to \$2,000,000	9 percent
Over \$	\$2,000,000 and to \$2,500,000	10 percent
Over \$	\$2,500,000 and to \$3,000,000	11 percent
Over \$	\$3,000,000	12 percent

- (2) Where the donee is the brother or sister, or descendant of the brother or sister, or is the uncle or aunt by blood of the donor (for each one hundred dollars (\$100.00) or fraction thereof):

First \$	5,000	4 percent
Over \$	5,000 and to \$ 10,000	5 percent
Over \$	10,000 and to \$ 25,000	6 percent
Over \$	25,000 and to \$ 50,000	7 percent
Over \$	50,000 and to \$ 100,000	8 percent
Over \$	100,000 and to \$ 250,000	10 percent
Over \$	250,000 and to \$ 500,000	11 percent
Over \$	500,000 and to \$1,000,000	12 percent
Over \$	\$1,000,000 and to \$1,500,000	13 percent
Over \$	\$1,500,000 and to \$2,000,000	14 percent
Over \$	\$2,000,000 and to \$3,000,000	15 percent
Over \$	\$3,000,000	16 percent

- (3) Where the donee is in any other degree of relationship than is hereinbefore stated, or shall be a stranger in blood to the

donor, or shall be a body politic or corporate (for each one hundred dollars (\$100.00) or fraction thereof):

First \$ 10,000	8 percent
Over \$ 10,000 and to \$ 25,000	9 percent
Over \$ 25,000 and to \$ 50,000	10 percent
Over \$ 50,000 and to \$ 100,000	11 percent
Over \$ 100,000 and to \$ 250,000	12 percent
Over \$ 250,000 and to \$ 500,000	13 percent
Over \$ 500,000 and to \$1,000,000	14 percent
Over \$1,000,000 and to \$1,500,000	15 percent
Over \$1,500,000 and to \$2,500,000	16 percent
Over \$2,500,000	17 percent

(g) A donor is entitled to a total exemption of one hundred thousand dollars (\$100,000) to be deducted from gifts made to donees named in subdivision (f)(1), less the sum of amounts claimed and allowed as an exemption in prior calendar years. The exemption, at the option of the donor, may be taken in its entirety in a single year or may be spread over a period of years. When this exemption has been exhausted, no further exemption is allowable. When the exemption or any part of the exemption is applied to gifts to more than one donee in any one calendar year, the exemption shall be apportioned against the gifts in the same ratio as the gross value of the gifts to each donee is to the total value of all the gifts made in the calendar year. No exemption is allowed a donor for gifts made to donees named in subdivision (f)(2) or (f)(3).

(h) It is expressly provided, however, that the tax levied in this Article shall not apply to so much of said property as shall so pass exclusively:

- (1) For state, county or municipal purposes within this State;
- (2) To or for the exclusive benefit of charitable, educational, or religious organizations located within this State, no part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (3) To or for the exclusive benefit of charitable, religious and educational corporations, foundations and trusts, not conducted for profit, incorporated or created or administered under the laws of any other state, when such other state levies no gift taxes upon property similarly passing from residents of such state to charitable, educational or religious corporations, foundations and trusts incorporated or created or administered under the laws of this State, or when such corporation, foundation or trust receives and disburses funds donated in this State for religious, charitable and educational purposes; or
- (4) To one spouse from the other spouse.

(i) The tax does not apply to tuition payments made on behalf of an individual to an educational institution or to medical payments made on behalf of an individual to a provider of medical care, as defined in the Code for the care of that individual. The term "educational institution" includes only those institutions that normally maintain a regular faculty and curriculum and normally have a regularly organized body of students in attendance where the educational activities are conducted.

(j) The tax does not apply to property transferred to a spouse when the transfer of the property is exempt from federal estate and gift taxes under section 2523(f) of the Code because it is considered

qualified terminable interest property. (1939, c. 158, s. 600; 1943, c. 400, s. 7; 1945, c. 708, s. 7; 1947, c. 501, s. 6; 1957, c. 1340, s. 6; 1973, c. 505; c. 1287, s. 9; 1983, c. 685, s. 1; 1983 (Reg. Sess., 1984), c. 1023, s. 1; c. 1024; 1985, c. 86; c. 656, ss. 4-6; 1989 (Reg. Sess., 1990), c. 814, s. 24; 1991 (Reg. Sess., 1992), c. 1007, s. 5; 1996, 2nd Ex. Sess., c. 13, s. 6.3.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment

or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective January 1, 1997, and applicable to the estates of decedents dying on or after that date and to gifts made on or after that date, added subsection (j).

§ 105-191: Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 7, effective June 21, 1996.

§ 105-196: Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 7, effective June 21, 1996.

§ 105-197. When return required; due date of tax and return.

Anyone who, during the calendar year, gives to a donee a gift of a future interest or one or more gifts whose total value exceeds the amount of the annual exclusion set in G.S. 105-188(d) must file a gift tax return, under oath or affirmation, with the Secretary on a form prescribed by the Secretary. The tax is due on April 15th following the end of the calendar year. A return must be filed on or before the due date of the tax. A taxpayer may ask the Secretary of Revenue for an extension of time for filing a return under G.S. 105-263. (1939, c. 158, s. 609; 1955, c. 22, s. 1; 1973, c. 1287, s. 9; 1985 (Reg. Sess., 1986), c. 821; 1991 (Reg. Sess., 1992), c. 930, s. 10; 1995 (Reg. Sess., 1996), c. 646, s. 8.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, inserted "tax and" in the catchline; deleted "of Revenue" following

"with the Secretary" in the first sentence; substituted "The tax" for "A return" in the second sentence; and inserted the present third sentence.

ARTICLE 8B.

Schedule I-B. Taxes upon Insurance Companies.

§ 105-228.5. Taxes measured by gross premiums.

(a) Tax Levied. — A tax is levied in this section on insurers, Article 65 corporations, and self-insurers. An insurer or Article 65 corporation that is subject to the tax levied by this section is not subject to franchise or income taxes imposed by Articles 3 and 4, respectively, of this Chapter.

(b) Tax Base. —

- (1) Insurers. — The tax imposed by this section on an insurer shall be measured by gross premiums from business done in this State during the preceding calendar year.
- (2) Additional Local Fire and Lightning Rate. — The additional tax imposed by subdivision (d)(4) of this section shall be measured by gross premiums from business done in fire districts in this State during the preceding calendar year. For the purpose of this section, the term “fire district” has the meaning provided in G.S. 58-84-5.
- (3) Article 65 Corporations. — The tax imposed by this section on an Article 65 corporation shall be measured by gross collections from membership dues, exclusive of receipts from cost plus plans, received by the corporation during the preceding calendar year.
- (4) Self-insurers. — The tax imposed by this section on a self-insurer shall be measured by the gross premiums that would be charged against the same or most similar industry or business, taken from the manual insurance rate then in force in this State, applied to the self-insurer’s payroll for the previous calendar year as determined under Article 2 of Chapter 97 of the General Statutes modified by the self-insurer’s approved experience modifier.

(b1) Calculation of Tax Base. — In determining the amount of gross premiums from business in this State, all gross premiums received in this State, credited to policies written or procured in this State, or derived from business written in this State shall be deemed to be for contracts covering persons, property, or risks resident or located in this State unless one of the following applies:

- (1) The premiums are properly reported and properly allocated as being received from business done in some other nation, territory, state, or states.
- (2) The premiums are from policies written in federal areas for persons in military service who pay premiums by assignment of service pay.

Gross premiums from business done in this State in the case of life insurance contracts, including supplemental contracts providing for disability benefits, accidental death benefits, or other special benefits that are not annuities, means all premiums collected in the calendar year, other than for contracts of reinsurance, for policies the premiums on which are paid by or credited to persons, firms, or corporations resident in this State, or in the case of group policies, for contracts of insurance covering persons resident within this State. The only deductions allowed shall be for premiums refunded on policies rescinded for fraud or other breach of contract and premiums that were paid in advance on life insurance contracts and subsequently refunded to the insured, premium payer, beneficiary or estate. Gross premiums shall be deemed to have been collected for the amounts as provided in the policy contracts for the time in force during the year, whether satisfied by cash payment, notes, loans, automatic premium loans, applied dividend, or by any other means except waiver of premiums by companies under a contract for waiver of premium in case of disability.

Gross premiums from business done in this State for all other contracts of insurance, including contracts of insurance required to be carried by the Workers’ Compensation Act, means all premiums

written during the calendar year, or the equivalent thereof in the case of self-insurers under the Workers' Compensation Act, for contracts covering property or risks in this State, other than for contracts of reinsurance, whether the premiums are designated as premiums, deposits, premium deposits, policy fees, membership fees, or assessments. Gross premiums shall be deemed to have been written for the amounts as provided in the policy contracts, new and renewal, becoming effective during the year irrespective of the time or method of making payment or settlement for the premiums, and with no deduction for dividends whether returned in cash or allowed in payment or reduction of premiums or for additional insurance, and without any other deduction except for return of premiums, deposits, fees, or assessments for adjustment of policy rates or for cancellation or surrender of policies.

(c) Exclusions. — Every insurer, in computing the premium tax, shall exclude all of the following from the gross amount of premiums:

- (1) All premiums received on or after July 1, 1973, from policies or contracts issued in connection with the funding of a pension, annuity, or profit-sharing plan qualified or exempt under section 401, 403, 404, 408, 457 or 501 of the Code as defined in G.S. 105-228.90.
- (2) Premiums or considerations received from annuities, as defined in G.S. 58-7-15.
- (3) Funds or considerations received in connection with funding agreements, as defined in G.S. 58-7-16.

The gross amount of the excluded premiums, funds, and considerations shall be exempt from the tax imposed by this section.

(d) Tax Rates; Disposition. —

- (1) Workers Compensation. — The tax rate to be applied to gross premiums, or the equivalent thereof in the case of self-insurers, collected on contracts applicable to liabilities under the Workers' Compensation Act shall be two and five-tenths percent (2.5%). The net proceeds shall be credited to the General Fund.
- (2) Other Insurance Contracts. — The tax rate to be applied to gross premiums collected on all other insurance contracts issued by insurers shall be one and nine-tenths percent (1.9%). The net proceeds shall be credited to the General Fund.
- (3) Additional Statewide Fire and Lightning Rate. — An additional tax shall be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage, except in the case of marine and automobile policies, at the rate of one and thirty-three hundredths percent (1.33%). Twenty-five percent (25%) of the net proceeds of this additional tax shall be deposited in the Volunteer Fire Department Fund established in Article 87 of Chapter 58 of the General Statutes. The remaining net proceeds shall be credited to the General Fund.
- (4) Additional Local Fire and Lightning Rate. — An additional tax shall be applied to amounts collected on contracts of insurance applicable to fire and lightning coverage within fire districts at the rate of one-half of one percent ($\frac{1}{2}$ of 1%). The net proceeds shall be credited to the Department of Insurance for disbursement pursuant to G.S. 58-84-25.

(5) Article 65 Corporations. — The tax rate to be applied to gross premiums and/or gross collections from membership dues, exclusive of receipts from cost plus plans, received by Article 65 corporations shall be one-half of one percent ($\frac{1}{2}$ of 1%). The net proceeds shall be credited to the General Fund.

(e) Report and Payment. — Each insurer, Article 65 corporation, and self-insurer doing business in this State shall, within the first 15 days of March, file with the Secretary of Revenue a full and accurate report of the total gross premiums as defined in this section, the payroll and other information required by the Secretary in the case of a self-insurer, or the total gross collections from membership dues exclusive of receipts from cost plus plans collected in this State during the preceding calendar year. The report shall be verified by the oath of the official or other representative responsible for transmitting it; the taxes imposed by this section shall be remitted to the Secretary with the report.

In the case of an insurer liable for the additional local fire and lightning tax, the report shall include the information required under G.S. 58-84-1.

(f) Installment Payments Required. — Insurers, Article 65 corporations, and self-insurers that are subject to the tax imposed by this section and have a premium tax liability, not including the additional local fire and lightning tax, of ten thousand dollars (\$10,000) or more for business done in North Carolina during the immediately preceding year shall remit three equal quarterly installments with each installment equal to at least thirty-three and one-third percent ($33\frac{1}{3}\%$) of the premium tax liability incurred in the immediately preceding taxable year. The quarterly installment payments shall be made on or before April 15, June 15, and October 15 of each taxable year. The company shall remit the balance by the following March 15 in the same manner provided in this section for annual returns.

The Secretary of Revenue may permit an insurance company to pay less than the required estimated payment when the insurer reasonably believes that the total estimated payments made for the current year will exceed the total anticipated tax liability for the year.

An underpayment of an installment payment required by this subsection shall bear interest at the rate established under G.S. 105-241.1(i). Any overpayment shall bear interest as provided in G.S. 105-266(b) and, together with the interest, shall be credited to the company and applied against the taxes imposed upon the company under this Article.

(g) Exemptions. — This section does not apply to farmers' mutual assessment fire insurance companies or to fraternal orders or societies that do not operate for a profit and do not issue policies on any person except members. (1945, c. 752, s. 2; 1947, c. 501, s. 8; 1951, c. 643, s. 8; 1955, c. 1313, s. 5; 1957, c. 1340, s. 12; 1959, c. 1211; 1961, c. 783; 1963, c. 1096; 1969, c. 1221; 1973, cc. 142, 1019; 1975, c. 143; c. 559, s. 8; 1979, c. 714, s. 2; 1983, c. 713, s. 81; 1985, c. 119, s. 3; c. 719, ss. 1, 2; 1985 (Reg. Sess., 1986), c. 1031, ss. 1-5; 1987, c. 709, s. 2; c. 814, s. 2; 1989 (Reg. Sess., 1990), c. 814, s. 27; 1991, c. 689, s. 297; 1993 (Reg. Sess., 1994), c. 600, s. 4; 1995, c. 360, s. 1(d); 1995 (Reg. Sess., 1996), c. 747, s. 2.)

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 747, s. 16, provides: "This act does not obligate the General Assembly to appropriate funds."

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective January 1, 1997, added the subdivision (b)(1) designation and subcatchline; inserted subdivision (b)(2); added the subdivision (b)(3) and (b)(4) designations and subcatchlines; added the subsection (b1) designation and subcatchline; added "Disposition" to the end of the subsection (d) subcatchline; added the subdivision (d)(1) designation and subcatchline; added the last sentence in subdivision (d)(1); added the subdivision (d)(2) designation and

subcatchline; added the last sentence in subdivision (d)(2); added the subdivision (d)(3) designation and subcatchline; in subdivision (d)(3), deleted "Rural" preceding "Volunteer Fire Department", substituted "Article 87" for "Articles 84 through 88", added the last sentence, and made a stylistic change; inserted subdivision (d)(4); added the subdivision (d)(5) designation and subcatchline; added the last sentence in subdivision (d)(5); added the last sentence in subsection (e); inserted "not including the additional local fire and lightning tax" following "premium tax liability" in the first sentence of the first paragraph of subsection (f); and deleted "as a penalty" following "interest" in the first sentence of the third paragraph of subsection (f).

§ 105-228.9. Commissioner of Insurance to administer portions of Article.

The following taxes relating to insurance are collected by the Commissioner of Insurance:

- (1) Surplus lines tax, G.S. 58-21-85.
- (2) Tax on risk retention groups not chartered in this State, G.S. 58-22-20(3).
- (3) Tax on person procuring insurance directly with an unlicensed insurer, G.S. 58-28-5(b).

The Commissioner of Insurance has the same authority and responsibility in administering those taxes as the Secretary of Revenue has in administering this Article. (1945, c. 752, s. 2; 1955, c. 1350, s. 22; 1973, c. 476, s. 193; 1987, c. 804, s. 9; 1995, c. 360, s. 1(a); 1995 (Reg. Sess., 1996), c. 747, s. 1.)

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 747, s. 16, provides: "This act does not obligate the General Assembly to appropriate funds."

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective January 1, 1997, rewrote this section.

ARTICLE 9.

Schedule J. General Administration; Penalties and Remedies.

§ 105-228.90. Scope and definitions.

(a) Scope. — This Article applies to Subchapters I, V, and VIII of this Chapter and to inspection taxes levied under Article 3 of Chapter 119 of the General Statutes.

(b) Definitions. — The following definitions apply in this Article:

- (1) City. — A city as defined by G.S. 160A-1(2). The term also includes an urban service district defined by the governing board of a consolidated city-county, as defined by G.S. 160B-2(1).

- (1a) Code. — The Internal Revenue Code as enacted as of March 20, 1996, including any provisions enacted as of that date which become effective either before or after that date.
- (1b) County. — Any one of the counties listed in G.S. 153A-10. The term also includes a consolidated city-county as defined by G.S. 160B-2(1).
- (2) Reserved.
- (3) Electronic Funds Transfer. — A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.
- (4) Reserved.
- (5) Person. — An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes.
- (6) Secretary. — The Secretary of Revenue.
- (7) Tax. — A tax levied under Subchapter I, V, or VIII of this Chapter or an inspection tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the terms “tax” and “additional tax” include penalties and interest as well as the principal amount.
- (8) Taxpayer. — A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes. (1991 (Reg. Sess., 1992), c. 930, s. 13; 1993, c. 12, s. 1; c. 354, s. 18; c. 450, s. 1; 1993 (Reg. Sess., 1994), c. 662, s. 1; c. 745, s. 13; 1995, c. 17, s. 9; c. 461, s. 14; 1995 (Reg. Sess., 1996), c. 664, s. 1.)

Editor’s Note. — Session Laws 1996, Second Extra Session, c. 13, s. 3.11, effective for taxable years beginning on or after January 1, 1996, and applicable to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996, provides that, notwithstanding the provisions of this section, if a taxpayer relocates an employee to this State during 1996, any in-house research expenses the taxpayer incurs with respect to that employee during 1996, either before or after relocation, are considered in-house research expenses in this State for purposes of this section, and further provides that if the federal tax credit for increasing research activities that was formerly allowed under s. 41 of the Code is reenacted, the credit for research and development allowed in Article 3A of this Chapter becomes effective for the same taxable year

for which the reenacted federal credit becomes effective.

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.”

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, substi-

tuted "March 20, 1996" for "January 1, 1995" in subdivision (b)(1a).

§ 105-229: Repealed by Session Laws 1995 (Regular Session, 1996), c. 646, s. 9, effective June 21, 1996.

§ 105-231. Penalty for exercising functions after suspension of articles or certificate.

CASE NOTES

Quoted in *Charles A. Torrence Co. v. Clary*, 121 N.C. App. 211, 464 S.E.2d 502 (1995).

§ 105-236. Penalties.

Except as otherwise provided by law, and subject to the provisions of G.S. 105-237, the following penalties shall be applicable:

- (1) **Penalty for Bad Checks.** — When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, an additional tax equal to ten percent (10%) of the check shall be imposed, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. The additional tax imposed may not be waived or diminished by the Secretary.
- (1a) **Penalty for Bad Electronic Funds Transfer.** — When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Secretary shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.
- (1b) **Making Payment in Wrong Form.** — For making a payment of tax in a form other than the form required by the Secretary pursuant to G.S. 105-241(a), the Secretary shall assess a penalty equal to five percent (5%) of the amount of the tax, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty may be waived by the Secretary in accordance with G.S. 105-237.
- (2) **Failure to Obtain a License.** — For failure to obtain a license before engaging in a business, trade or profession for which a license is required, there shall be assessed an additional tax equal to five percent (5%) of the amount prescribed for the license per month or fraction thereof

until paid, which additional tax shall not exceed twenty-five percent (25%) of the amount so prescribed, but in any event shall not be less than five dollars (\$5.00).

(3) **Failure to File Return.** — In case of failure to file any return on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause, there shall be added to the amount required to be shown as tax on the return, as a penalty, five percent (5%) of the amount of the tax if the failure is for not more than one month, with an additional five percent (5%) for each additional month, or fraction thereof, during which the failure continues, not exceeding twenty-five percent (25%) in the aggregate, or five dollars (\$5.00), whichever is the greater.

(4) **Failure to Pay Tax When Due.** — In the case of failure to pay any tax when due, without intent to evade the tax, there shall be an additional tax, as a penalty, of ten percent (10%) of the tax; provided, that such penalty shall in no event be less than five dollars (\$5.00). This penalty does not apply in any of the following circumstances:

- a. When the amount of tax shown as due on an amended return is paid when the return is filed.
- b. When a tax due but not shown on a return is assessed by the Secretary and is paid within 30 days after the date of the proposed notice of assessment of the tax.

(5) **Negligence.** —

a. **Most cases.** — For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, there shall be assessed, as a penalty, an additional tax of ten percent (10%) of the deficiency due to the negligence.

b. **Large income tax deficiency.** — In the case of income tax, if a taxpayer understates gross income, overstates deductions from gross income, other than personal exemptions, makes erroneous adjustments to federal taxable income, or does any combination of these, and the combined errors equal or exceed twenty-five percent (25%) of gross income, the penalty assessed shall be twenty-five percent (25%) of the deficiency. For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code and "deductions" means deductions allowed in arriving at federal taxable income.

c. **Large sales tax deficiency.** — In the case of sales and use taxes, if a taxpayer understates total tax liability by twenty-five percent (25%) or more as a result of one or more of the following reasons, the penalty assessed shall be twenty-five percent (25%) of the total deficiency:

1. Omission or understatement of gross sales, gross receipts, or gross purchases.
2. Overstatement of exemptions or deductions.
3. Incorrect application of a lesser rate of tax.

d. **No double penalty.** — [If a penalty is assessed under subdivision (6) of this section, no additional penalty for

negligence shall be assessed with respect to the same deficiency.]

- (5a) Misuse of Certificate of Resale. — For misuse of a certificate of resale by a purchaser, the Secretary shall assess an additional tax, as a penalty, of two hundred fifty dollars (\$250.00).
- (5b) Road Tax Understatement. — If a motor carrier understates its liability for the road tax imposed by Article 36B of this Chapter by twenty-five percent (25%) or more, the Secretary shall assess the motor carrier a penalty in an amount equal to two times the amount of the deficiency.
- (6) Fraud. — If there is a deficiency or delinquency in payment of any tax because of fraud with intent to evade the tax, there shall be assessed, as a penalty, an additional tax equal to fifty percent (50%) of the total deficiency.
- (7) Attempt to Evade or Defeat Tax. — Any person who willfully attempts, or any person who aids or abets any person to attempt in any manner to evade or defeat a tax or its payment, shall, in addition to other penalties provided by law, be guilty of a Class I felony which may include a fine up to twenty-five thousand dollars (\$25,000).
- (8) Willful Failure to Collect, Withhold, or Pay Over Tax. — Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.
- (9) Willful Failure to File Return, Supply Information, or Pay Tax. — Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of three years after the date of the violation.
- (9a) Aid or Assistance. — Any person, pursuant to or in connection with the revenue laws, who willfully aids, assists in, procures, counsels, or advises the preparation, presentation, or filing of a return, affidavit, claim, or any other document that the person knows is fraudulent or false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present or file the return, affidavit, claim, or other document, shall be guilty of a Class I felony which may include a fine up to ten thousand dollars (\$10,000).
- (10) Failure to File Informational Returns. —
 - a. For failure to file a partnership or a fiduciary informational return when the return is due to be filed, there shall be assessed as a tax against the delinquent five

dollars (\$5.00) per month or fraction thereof of the delinquency, this penalty, however, in the aggregate not to exceed twenty-five dollars (\$25.00). When assessed against a fiduciary, the penalty shall be paid by the fiduciary and shall not be passed on to the trust or estate. No tax may be assessed against the delinquent when it is a partnership as defined under Section 6231(a)(1)(B) of the Code and no penalty could be assessed as provided by Rev. Proc. 84-35, except that for the purpose of Section 3.01 of that procedure "the Department of Revenue" is substituted for "the Internal Revenue Service".

- b. For failure to file timely statements of payments to another person with respect to wages, dividends, rents, or interest paid to that person, there shall be assessed as a tax a penalty of one dollar (\$1.00) for each statement not filed on time, the aggregate of the penalties for each tax year not to exceed one hundred dollars (\$100.00), and in addition thereto, if the Secretary requests the payer to file the statements and sets a date by which the statements must be filed, and the payer fails to file the statements within this time, the amounts claimed on payer's income tax return as deductions for salaries and wages, or rents or interest shall be disallowed to the extent that the payer failed to comply with the Secretary's request with respect to the statements.
 - c. For failure to file an informational return required by Article 36C or 36D of this Chapter by the date the return is due, there shall be assessed as a tax a penalty of fifty dollars (\$50.00).
- (11) Any violation of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes is considered an act committed in part at the office of the Secretary in Raleigh. The certificate of the Secretary that a tax has not been paid, a return has not been filed, or information has not been supplied, as required by law, is prima facie evidence that the tax has not been paid, the return has not been filed, or the information has not been supplied.
- (12) Repealed by Session Laws 1991, c. 45, s. 27, effective April 22, 1991. (1939, c. 158, s. 907; 1953, c. 1302, s. 7; 1959, c. 1259, s. 8; 1963, c. 1169, s. 6; 1967, c. 1110, s. 9; 1973, c. 476, s. 193; c. 1287, s. 13; 1979, c. 156, s. 2; 1985, c. 114, s. 11; 1985 (Reg. Sess., 1986), c. 983; 1987 (Reg. Sess., 1988), c. 1076; 1989, c. 557, ss. 7 to 10; 1989 (Reg. Sess., 1990), c. 1005, s. 9; 1991, c. 45, s. 27; 1991 (Reg. Sess., 1992), c. 914, s. 2; c. 1007, s. 10; 1993, c. 354, s. 22; c. 450, s. 10; c. 539, ss. 709, 710, 1292, 1293; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 390, s. 36; 1995 (Reg. Sess., 1996), c. 646, s. 10; c. 647, s. 51; c. 696, s. 1.)

Editor's Note. —

The language in subdivision (5)d. has been placed in brackets as the presumed intention of the legislature as Session Laws 1995 (Regular Session, 1996), c.

646, s. 10, struck through the language in (5)d. but added the current subcatchline.

Effect of Amendments. —

Session Laws 1995 (Reg. Sess., 1996),

c. 646, s. 10, effective June 21, 1996, substituted "by law" for "in this Subchapter" in the introductory language; in subdivision (1), deleted "of Revenue" following "Secretary" in the second and third sentences, substituted "inadvertence" for "inadvertance" in the second sentence, and deleted the last sentence, which read "This subsection applies to all taxes levied or assessed by the State"; deleted the second sentence of subdivision (1a), which read "This subdivision applies to all taxes levied or assessed by the State"; substituted "the" for "such" preceding "license per month" in subdivision (2); in subdivision (3), deleted "required under this Subchapter" following "failure to file any return", and substituted "the" for "such" throughout; rewrote subdivision (5); substituted "tax because of" for "tax levied by this Subchapter, due to" in subdivision (6); substituted "a tax or its payment" for "any tax imposed by this Subchapter of

the General Statutes, or the payment thereof" in subdivision (7); in subdivision (8), deleted "under this Subchapter" following "Any person required", deleted "imposed by this Subchapter" following "pay over any tax", and substituted "the" for "such" preceding "tax shall"; in subdivision (9), deleted "under this Subchapter" following "Any person required", substituted "rules" for "regulations" following "required by law, or", and substituted "the" for "such" throughout; substituted "the person" for "he" in subdivision (9a); and rewrote subdivision (10).

Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 51, effective July 1, 1996, added subdivision (10)c.

Session Laws 1995 (Reg. Sess., 1996), c. 696, s. 1, effective January 1, 1997, and applicable to taxes due on or after that date, in subdivision (4), added the second sentence, and added subdivisions (4)a. and (4)b.

§ 105-241.1. Additional taxes; assessment procedure.

(a) Proposed Assessment. — If the Secretary discovers that any tax is due from a taxpayer, the Secretary must notify the taxpayer in writing of the kind and amount of tax due and of the Secretary's intent to assess the taxpayer for the tax. The notice must describe the basis for the proposed assessment and identify the amounts of any tax, interest, additions to tax, and penalties included in the proposed assessment. The notice must also advise the taxpayer that the proposed assessment will become final unless the taxpayer requests a hearing within the time set in subsection (c) of this section.

The Secretary must base a proposed assessment on the best information available. A proposed assessment of the Secretary is presumed to be correct.

(b) Delivery of Notice. — The Secretary shall deliver the notice of a proposed assessment to a taxpayer either in person or by United States mail sent to the taxpayer's last known address. A notice mailed to a taxpayer is presumed to have been received by the taxpayer unless the taxpayer makes an affidavit to the contrary within 90 days after the notice was mailed. If the taxpayer makes this affidavit, the time limitations in subsection (c) apply as if the notice had been delivered on the date the taxpayer makes the affidavit.

(c) Hearing. — A taxpayer who objects to a proposed assessment of tax is entitled to a hearing before the Secretary as provided in this subsection. To obtain a hearing, the taxpayer must file a written request either for a hearing or for a written statement of the information and evidence upon which the proposed assessment is based. If the notice of a proposed assessment was mailed, the taxpayer's request must be filed within 30 days after the date the notice was mailed; if the notice of a proposed assessment was

delivered in person, the taxpayer's request must be filed within 30 days after the date the notice was delivered.

When a taxpayer files a timely request for a written statement of the information and evidence upon which a proposed assessment is based, the Secretary must give the written statement to the taxpayer within 45 days after the taxpayer filed the request. A taxpayer who files a timely request for a written statement concerning a proposed assessment and who desires to have a hearing on the proposed assessment must file a written request for a hearing within 30 days after the written statement was mailed.

When a taxpayer files a timely request for a hearing, the Secretary must set the time and place at which the hearing will be conducted and must notify the taxpayer of the designated time and place within 60 days after the taxpayer filed the request for a hearing and at least 10 days before the date set for the hearing. The date set for the hearing must be within 90 days after the timely request for a hearing was filed or at a later date mutually agreed upon by the taxpayer and the Secretary. The date set for the hearing may be postponed once at the request of the taxpayer and once at the request of the Secretary for a period of up to 90 days or for a longer period mutually agreed upon by the taxpayer and the Secretary.

The taxpayer may present any objections to the proposed assessment at the hearing. The rules of evidence do not apply at the hearing.

Within 90 days after the Secretary conducts a hearing on a proposed assessment, the Secretary must make a decision on the proposed assessment and notify the taxpayer of the decision. The decision must assess the taxpayer for the amount of any tax the Secretary determined to be due.

(d) Assessment. — If a taxpayer does not apply for a hearing in accordance with subsection (c) of this section, a proposed assessment becomes final without further notice. If a taxpayer applies for a hearing in accordance with subsection (c) of this section, a proposed assessment becomes final when the taxpayer is notified of the decision made after the hearing. An assessment that is final is immediately due and collectible. G.S. 105-241.2, 105-241.3, and 105-241.4 apply to a tax assessed under this section.

Except in the case of a jeopardy assessment, the Secretary may not assess a taxpayer for a tax until the notice required by subsection (a) has been given and one of the following has occurred:

- (1) The time for applying for a hearing has expired.
- (2) The Secretary and the taxpayer have agreed upon a settlement.
- (3) The taxpayer has filed a timely application for a hearing and the Secretary, after conducting the hearing, has given the taxpayer written notice of the decision.

(d1) Notice of Assessment. — The Secretary must notify the taxpayer when a proposed assessment becomes final and is therefore collectible. The notice must identify the amounts of any tax, interest, additions to tax, and penalties included in the assessment. The notice must include or be accompanied by a brief statement in simple and nontechnical terms of all of the following:

- (1) The Department's authority to, and procedure for, levy on and sale of the taxpayer's property.
- (2) The taxpayer's available administrative appeals regarding the levy and sale of property, including the procedures for appeal.

- (3) Other options available to the taxpayer that could prevent levy on the property.
- (4) Procedures to redeem property and obtain release of a lien on property.

(e) Statute of Limitations. — There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-29, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination. If a taxpayer forfeits a tax credit pursuant to G.S. 105-163.014 or Article 3A of this Chapter, the Secretary must assess any tax due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary must assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells at a gain the taxpayer's principal residence, the Secretary must assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver.

(f) Repealed by Session Laws 1993, c. 532, s. 2, effective January 1, 1994.

(g) Jeopardy Assessments. — Notwithstanding any other provision of this section, the Secretary may at any time within the applicable period of limitations immediately assess any tax the Secretary finds is due from a taxpayer if the Secretary determines that collection of the tax is in jeopardy and immediate assessment is necessary in order to protect the interest of the State. For a jeopardy assessment, the Secretary may give the taxpayer the notice of proposed assessment required by subsection (a) any time within 30 days after the jeopardy assessment is made. The taxpayer may request a hearing on the jeopardy assessment by following the procedure described in the notice.

Within five days after a jeopardy assessment is made under this subsection that is not the result of a criminal investigation or of a

liability for a tax imposed under Article 2D of this Chapter, the Secretary must provide the taxpayer with a written statement of the information upon which the Secretary relied in making the assessment. Within 30 days after receipt of this written statement or, if no statement is received, within 30 days after the statement was due, the taxpayer may request the Secretary to review the action taken. After receipt of this request, the Secretary must determine whether making the jeopardy assessment was reasonable under all the circumstances and whether the amount assessed is reasonable under all the circumstances. The Secretary must give the taxpayer written notice of this determination within 30 days after the request. The taxpayer may seek judicial review of this determination as provided in G.S. 105-241.5.

(h) Repealed by Session Laws 1993, c. 532, s. 2, effective January 1, 1994.

(i) Interest. — All assessments of tax, exclusive of penalties assessed on the tax, shall bear interest at the rate established pursuant to this subsection from the time the tax was due until paid. On or before June 1 and December 1 of each year, the Secretary shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions and to the rate that will be in effect on that date pursuant to the Code. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Secretary may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(il) Repealed by Session Laws 1993, c. 532, s. 2, effective January 1, 1994.

(j) Construction. — This section is in addition to and not in substitution of any other provision of the General Statutes relative to the assessment and collection of taxes. (1949, c. 392, s. 6; 1951, c. 643, s. 9; 1955, c. 1350, s. 23; 1957, c. 1340, s. 10; 1959, c. 1259, s. 8; 1969, c. 1132, s. 1; 1973, c. 476, s. 193; c. 1287, s. 13; 1977, c. 657, s. 6; c. 1114, ss. 1, 11; 1981 (Reg. Sess., 1982), c. 1211, s. 2; c. 1223, s. 4; 1987, c. 827, s. 21; 1989, c. 530; 1993, c. 443, s. 6; c. 532, s. 2; 1993 (Reg. Sess., 1994), c. 582, s. 5; c. 745, s. 14; 1995, c. 17, s. 18; c. 468, s. 2; 1995 (Reg. Sess., 1996), c. 646, s. 11; 1996, 2nd Ex. Sess., c. 13, s. 3.7.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. —

Session Laws 1995 (Reg. Sess., 1996),

c. 646, s. 11, effective June 21, 1996, in subsection (e), in the first paragraph, inserted "There is no statute of limitations and" at the beginning, and made a related change; and in the second paragraph, deleted "or additional tax" following "must assess any tax" in the third sentence, and added the last two sentences.

Session Laws 1996, Second Extra Session, c. 13, s. 3.7, effective for taxable years beginning on or after January 1, 1996, and applicable to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996, substituted "G.S. 105-163.014 or Article 3A of this Chapter" for "G.S. 105-163.014" in the third sentence of second paragraph of subsection (e).

CASE NOTES

Cited in State v. Bonds, 120 N.C. App. 546, 463 S.E.2d 298 (1995); John R. Sexton & Co. v. Justus, 342 N.C. 374, 464 S.E.2d 268 (1995).

§ 105-242. Warrants for collection of taxes; garnishment and attachment; certificate or judgment for taxes.

CASE NOTES

Applied in State v. Bonds, 120 N.C. App. 546, 463 S.E.2d 298 (1995).

§ 105-253. Personal liability of officers, trustees, or receivers.

(a) Any officer, trustee, or receiver of any corporation required to file a report with the Secretary of Revenue who has custody of funds of the corporation and who allows the funds to be paid out or distributed to the stockholders of the corporation without having remitted to the Secretary of Revenue any State taxes that are due shall be personally liable for the payment of the tax, and shall be subject to an additional penalty equal to the amount of tax due.

(b) Each responsible corporate officer is personally and individually liable for all of the following:

- (1) All sales and use taxes collected by a corporation upon taxable transactions of the corporation.
- (2) All sales and use taxes due upon taxable transactions of the corporation but upon which the corporation failed to collect the tax, but only if the responsible officer knew, or in the exercise of reasonable care should have known, that the tax was not being collected.
- (3) All taxes due from the corporation pursuant to the provisions of Article 36C and 36D of Subchapter V of this Chapter and all taxes payable under those Articles by the corporation to a supplier for remittance to this State or another state.

The liability of the responsible corporate officer is satisfied upon timely remittance of the tax by the corporation. If the tax remains unpaid by the corporation after it is due and payable, the Secretary may assess the tax against, and collect the tax from, any responsible corporate officer in accordance with the procedures in this Article for assessing and collecting tax from a taxpayer. As used in this section, the term "responsible corporate officer" includes the president and the treasurer of the corporation and any other officers assigned the duty of filing tax returns and remitting taxes on behalf of the corporation. Any penalties that may be imposed under G.S. 105-236 and that apply to a deficiency shall apply to any assessment made under this section. The provisions of this Article apply to an assessment made under this section to the extent they are not inconsistent with this section.

The period of limitations for assessing a responsible corporate officer for unpaid taxes under this section shall expire one year after the expiration of the period of limitations for assessment against the corporation.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1007, s. 15, effective July 21, 1992. (1939, c. 158, s. 923; 1941, c. 50, s. 10; 1955, c. 1350, s. 23; 1973, c. 476, s. 193; c. 1287, s. 13; 1983, c. 220, s. 1; 1991, c. 690, s. 7; 1991 (Reg. Sess., 1992), c. 1007, s. 15; 1995, c. 390, s. 15; 1995 (Reg. Sess., 1996), c. 647, s. 52.)

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 52 substituted “36C and 36D” for “36 and Article 36A”.

Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 52 substituted “Article 36C and 36D” for “Article 36 and Article 36A” although this amendment had previously been made by Session Laws 1995 c. 390, s. 15 effective July 1, 1996.

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amend-

ment, effective July 1, 1996, in subdivision (b)(3), substituted “36C and 36D” for “36 and Article 36A”, and added “and all taxes payable under those Articles by the corporation to a supplier for remittance to this State or another state”; and in the second paragraph of subsection (b), deleted “to the Secretary” following “remittance of the tax” in the first sentence, and following “and remitting taxes” in the third sentence.

§ 105-267. Taxes to be paid; suits for recovery of taxes.

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a person has a valid defense to the enforcement of the collection of a tax, the person shall pay the tax to the proper officer, and that payment shall be without prejudice to any defense of rights the person may have regarding the tax. At any time within the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the courts of the State for the amount demanded. The protest period for a tax levied in Article 2A, 2B, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is one year after payment.

The suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it is determined that all or part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The amount of taxes for which judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section. (1939, c. 158, s. 936; 1955, c. 1350, s. 15; 1957, c. 1340, s. 10; 1977, c. 946, s. 1; 1996, 2nd Ex. Sess., c. 14, s. 10.1.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been

available under the amended or repealed statute before its amendment or repeal.”

“Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.”

Effect of Amendments. — The 1996

Second Extra Session amendment, effective November 1, 1996, and applicable to taxes paid on or after that date, rewrote this section.

CASE NOTES

Cited in John R. Sexton & Co. v. Justus, 342 N.C. 374, 464 S.E.2d 268 (1995).

SUBCHAPTER II. LISTING, APPRAISAL, AND ASSESSMENT OF PROPERTY AND COLLECTION OF TAXES ON PROPERTY.

ARTICLE 12.

Property Subject to Taxation.

§ 105-275. Property classified and excluded from the tax base.

The following classes of property are hereby designated special classes under authority of Article V, Sec. 2(2), of the North Carolina Constitution and shall not be listed, appraised, assessed, or taxed:

- (1) Repealed by Session Laws 1987, c. 813, s. 5.
- (2) Tangible personal property that has been imported from a foreign country through a North Carolina seaport terminal and which is stored at such a terminal while awaiting further shipment for the first 12 months of such storage. (The purpose of this classification is to encourage the development of the ports of this State.)
- (3) Real and personal property owned by nonprofit water or nonprofit sewer associations or corporations.
- (4) Repealed by Session Laws 1987, c. 813, s. 5.
- (5) Vehicles that the United States government gives to veterans on account of disabilities they suffered in World War II, the Korean Conflict, or the Vietnam Era so long as they are owned by:
 - a. A person to whom a vehicle has been given by the United States government or
 - b. Another person who is entitled to receive such a gift under Title 38, section 252, United States Code Annotated.
- (6) Special nuclear materials held for or in the process of manufacture, processing, or delivery by the manufacturer or processor thereof, regardless whether the manufacturer or processor owns the special nuclear materials. The terms "manufacture" and "processing" do not include the use of special nuclear materials as fuel. The term "special nuclear materials" includes (i) uranium 233, uranium enriched in the isotope 233 or in the isotope 235; and (ii) any material artificially enriched by any of the foregoing, but not including source material. "Source material" means any material except special nuclear material which contains by weight

one twentieth of one percent (0.05%) or more of (i) uranium, (ii) thorium, or (iii) any combination thereof. Provided however, that to qualify for this exemption no such nuclear materials shall be discharged into any river, creek or stream in North Carolina. The classification and exclusion provided for herein shall be denied to any manufacturer, fabricator or processor who permits burial of such material in North Carolina or who permits the discharge of such nuclear materials into the air or into any river, creek or stream in North Carolina if such discharge would contravene in any way the applicable health and safety standards established and enforced by the Department of Environment, Health, and Natural Resources or the Nuclear Regulatory Commission. The most stringent of these standards shall govern.

(7) Real and personal property that is:

a. Owned either by a nonprofit corporation formed under the provisions of Chapter 55A of the General Statutes or by a bona fide charitable organization, and either operated by such owning organization or leased to another such nonprofit corporation or charitable organization, and

b. Appropriated exclusively for public parks and drives.

(8)a. Real and personal property that is used or, if under construction, is to be used exclusively for air cleaning or waste disposal or to abate, reduce, or prevent the pollution of air or water (including, but not limited to, waste lagoons and facilities owned by public or private utilities built and installed primarily for the purpose of providing sewer service to areas that are predominantly residential in character or areas that lie outside territory already having sewer service), if the Department of Environment, Health, and Natural Resources or a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 furnishes a certificate to the tax supervisor of the county in which the property is situated or to be situated stating that the Environmental Management Commission or local air pollution control program has found that the described property:

1. Has been or will be constructed or installed;
2. Complies with or that plans therefor which have been submitted to the Environmental Management Commission or local air pollution control program indicate that it will comply with the requirements of the Environmental Management Commission or local air pollution control program;
3. Is being effectively operated or will, when completed, be required to operate in accordance with the terms and conditions of the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program; and
4. Has or, when completed, will have as its primary rather than incidental purpose the reduction of

water pollution resulting from the discharge of sewage and waste or the reduction of air pollution resulting from the emission of air contaminants.

- b. Real or personal property that is used or, if under construction, is to be used exclusively for recycling or resource recovering of or from solid waste, if the Department of Environment, Health, and Natural Resources furnishes a certificate to the tax supervisor of the county in which the property is situated stating the Department of Environment, Health, and Natural Resources has found that the described property has been or will be constructed or installed, complies or will comply with the rules of the Department of Environment, Health, and Natural Resources, and has, or will have as its primary purpose recycling or resource recovering of or from solid waste.
 - c. Tangible personal property that is used exclusively, or if being installed, is to be used exclusively, for the prevention or reduction of cotton dust inside a textile plant for the protection of the health of the employees of the plant, in accordance with occupational safety and health standards adopted by the State of North Carolina pursuant to Article 16 of G.S. Chapter 95. The Department of Revenue shall adopt guidelines to assist the tax supervisors in administering this exclusion.
- (9) through (11) Repealed by Session Laws 1987, c. 813, s. 5.
 - (12) Real property owned by a nonprofit corporation or association exclusively held and used by its owner for educational and scientific purposes as a protected natural area. (For purposes of this subdivision, the term "protected natural area" means a nature reserve or park in which all types of wild nature, flora and fauna, and biotic communities are preserved for observation and study.)
 - (13) Repealed by Session Laws 1973, c. 904.
 - (14) Motor vehicles chassis belonging to nonresidents, which chassis temporarily enters the State for the purpose of having a body mounted thereon.
 - (15) Upon the date on which each county's next general reappraisal of real property under the provisions of G.S. 105-286(a) becomes effective, standing timber, pulpwood, seedlings, saplings, and other forest growth. (The purpose of this classification is to encourage proper forest management practices and to develop and maintain the forest resources of the State.)
 - (16) Non-business Property. — As used in this subdivision, the term "non-business property" means personal property that is used by the owner of the property for a purpose other than the production of income and is not used in connection with a business. The term includes household furnishings, clothing, pets, lawn tools, and lawn equipment. The term does not include motor vehicles, mobile homes, aircraft, watercraft, or engines for watercraft.
 - (17) Real and personal property belonging to the American Legion, Veterans of Foreign Wars, Disabled American Veterans, or to any similar veterans organizations chartered by the Congress of the United States or organized and

operated on a statewide or nationwide basis, and any post or local organization thereof, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient and normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.

(18) Real and personal property belonging to the Grand Lodge of Ancient, Free and Accepted Masons of North Carolina, the Prince Hall Masonic Grand Lodge of North Carolina, their subordinate lodges and appendant bodies including the Ancient and Arabic Order Nobles of the Mystic Shrine, and the Ancient Egyptian Order Nobles of the Mystic Shrine, when used exclusively for meeting or lodge purposes by said organization, together with such additional adjacent real property as may be necessary for the convenient normal use of the buildings thereon. Notwithstanding the exclusive-use requirement hereinabove established, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this section.

(19) Real and personal property belonging to the Loyal Order of Moose, the Benevolent and Protective Order of Elks, the Knights of Pythias, the Odd Fellows, the Woodmen of the World, and similar fraternal or civic orders and organizations operated for nonprofit benevolent, patriotic, historical, charitable, or civic purposes, when used exclusively for meeting or lodge purposes by the organization, together with as much additional adjacent real property as may be necessary for the convenient normal use of the buildings. Notwithstanding the exclusive-use requirement of this subdivision, if a part of a property that otherwise meets this subdivision's requirements is used for a purpose that would require that it not be listed, appraised, assessed, or taxed if the entire property were so used, that part, according to its value, shall not be listed, appraised, assessed, or taxed. The fact that a building or facility is incidentally available to and patronized by the general public, so far as there is no material amount of business or patronage with the general public, shall not defeat the classification granted by this

section. Nothing in this subdivision shall be construed so as to include social fraternities, sororities, and similar college, university, or high school organizations in the classification for exclusion from ad valorem taxes.

- (20) Real and personal property belonging to Goodwill Industries and other charitable organizations organized for the training and rehabilitation of disabled persons when used exclusively for training and rehabilitation, including commercial activities directly related to such training and rehabilitation.
- (21) The first thirty-eight thousand dollars (\$38,000) in assessed value of housing together with the necessary land therefor, owned and used as a residence by a disabled veteran who receives benefits under 38 U.S.C. § 2101. This exclusion shall be the total amount of the exclusion applicable to such property.
- (22) Repealed by Session Laws 1987, c. 813, s. 5.
- (23) Tangible personal property imported from outside the United States and held in a Foreign Trade Zone for the purpose of sale, manufacture, processing, assembly, grading, cleaning, mixing or display and tangible personal property produced in the United States and held in a Foreign Trade Zone for exportation, either in its original form or as altered by any of the above processes.
- (24) Cargo containers and container chassis used for the transportation of cargo by vessels in ocean commerce.

The term "container" applies to those nondisposable receptacles of a permanent character and strong enough for repeated use and specially designed to facilitate the carriage of goods, by one or more modes of transport, one of which shall be by ocean vessels, without intermediate reloadings and fitted with devices permitting its ready handling particularly in the transfer from one transport mode to another.

- (25) Tangible personal property shipped into this State for the purpose of repair, alteration, maintenance or servicing and reshipment to the owner outside this State.
- (26) For the tax year immediately following transfer of title, tangible personal property manufactured in this State for the account of a nonresident customer and held by the manufacturer for shipment. For the purpose of this subdivision, the term "nonresident" means a taxpayer having no place of business in North Carolina.
- (27), (28) Repealed by Session Laws 1983, c. 643, s. 1.
- (29) Real property and easements wholly and exclusively held and used for nonprofit historic preservation purposes by a nonprofit historical association or institution, including real property owned by a nonprofit corporation organized for historic preservation purposes and held by its owner exclusively for sale under an historic preservation agreement prepared and recorded under the provisions of the Conservation and Historic Preservation Agreements Act, Article 4, Chapter 121 of the General Statutes of North Carolina.
- (29a) Land within an historic district held, by a nonprofit corporation organized for historic preservation purposes,

for use as a future site for an historic structure that is to be moved to the site from another location. Property may be classified under this subdivision for no more than five years. The taxes that would otherwise be due on land classified under this subdivision shall be a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The taxes shall be carried forward in the records of the taxing unit or units as deferred taxes and shall be payable five years from the fiscal year the exclusion is first claimed unless an historic structure is moved onto the site during that time. If an historic structure has not been moved to the site within five years, then deferred taxes for the preceding five fiscal years shall immediately be payable, together with interest as provided in G.S. 105-360 for unpaid taxes that shall accrue on the deferred taxes as if they had been payable on the dates on which they would originally become due. All liens arising under this subdivision are extinguished upon either the payment of any deferred taxes under this subdivision or the location of an historic structure on the site within the five-year period allowed under this subdivision.

(30) Repealed by Session Laws 1987, c. 813, s. 5.

(31) Money, whether on hand or on deposit at a bank, a credit union, a savings and loan association, or an insurance company.

(31a) Accounts receivable.

(31b) Bonds, notes, and other evidences of debt.

(31c) Shares of stock, including shares and units of ownership of mutual funds, investment trusts, and investment funds.

(31d) The beneficial or equitable interest in a trust, trust fund, or trust account, including custodial accounts, held by a foreign fiduciary.

(32) Real and personal property owned by a home for the aged, sick, or infirm, that is exempt from tax under Article 4 of this Chapter, and used in the operation of that home. The term "home for the aged, sick, or infirm" means a self-contained community that (i) is designed for elderly residents; (ii) operates a skilled nursing facility, an intermediate care facility, or a home for the aged; (iii) includes residential dwelling units, recreational facilities, and service facilities; (iv) the charter of which provides that in the event of dissolution, its assets will revert or be conveyed to an entity organized exclusively for charitable, educational, scientific, or religious purposes, and which qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986; (v) is owned, operated, and managed by one of the following entities:

A. A congregation, parish, mission, synagogue, temple, or similar local unit of a church or religious body;

B. A conference, association, division, presbytery, diocese, district, synod, or similar unit of a church or religious body;

C. A Masonic organization whose property is excluded from taxation pursuant to G.S. 105-275(18); or

D. A nonprofit corporation governed by a board of directors at least a majority of whose members elected for terms

commencing on or before December 31, 1987, shall have been elected or confirmed by, and all of whose members elected for terms commencing after December 31, 1987, shall be selected by, one or more entities described in A., B., or C. of this subdivision, or organized for a religious purpose as defined in G.S. 105-278.3(d)(1); and

(vi) has an active program to generate funds through one or more sources, such as gifts, grants, trusts, bequests, endowment, or an annual giving program, to assist the home in serving persons who might not be able to reside at the home without financial assistance or subsidy.

- (32a) Inventories owned by contractors.
- (33) Inventories owned by manufacturers.
- (34) Inventories owned by retail and wholesale merchants.
- (35) Severable development rights, as defined in G.S. 136-66.11(a), when severed and evidenced by a deed recorded in the office of the register of deeds pursuant to G.S. 136-66.11(c).
- (36) Real and personal property belonging to the North Carolina Low-Level Radioactive Waste Management Authority created under Chapter 104G of the General Statutes.
- (37) Poultry and livestock and feed used in the production of poultry and livestock.
- (38) Real and personal property belonging to the North Carolina Hazardous Waste Management Commission created under Chapter 130B of the General Statutes.
- (39) Real and personal property that is: (i) owned by a nonprofit corporation organized upon the request of a local government unit for the sole purpose of financing projects for public use, (ii) leased to a unit of local government whose property is exempt from taxation under G.S. 105-278.1, and (iii) used in whole or in part for a public purpose by such unit of local government. If only part of the property is used for a public purpose, only that part is exempt from the tax. This subdivision shall not apply if any distributions are made to members, officers, or directors of the nonprofit corporation.
- (40) Computer software and any documentation related to the computer software. As used in this subdivision, the term "computer software" means any program or routine used to cause a computer to perform a specific task or set of tasks. The term includes system and application programs and database storage and management programs.

The exclusion established by this subdivision does not apply to computer software and its related documentation if the computer software meets one or more of the following descriptions:

- a. It is embedded software. "Embedded software" means computer instructions, known as microcode, that reside permanently in the internal memory of a computer system or other equipment and are not intended to be removed without terminating the operation of the computer system or equipment and removing a computer chip, a circuit, or another mechanical device.
- b. It is purchased or licensed from a person who is unrelated to the taxpayer and it is capitalized on the books

of the taxpayer in accordance with generally accepted accounting principles, including financial accounting standards issued by the Financial Accounting Standards Board. A person is unrelated to a taxpayer if (i) the taxpayer and the person are not subject to any common ownership, either directly or indirectly, and (ii) neither the taxpayer nor the person has any ownership interest, either directly or indirectly, in the other.

This subdivision does not affect the value or taxable status of any property that is otherwise subject to taxation under this Subchapter. (1939, c. 310, s. 303; 1961, c. 1169, s. 8; 1967, c. 1185; 1971, c. 806, s. 1; c. 1121, s. 3; 1973, cc. 290, 451; c. 476, s. 128; c. 484; c. 695, s. 1; c. 790, s. 1; cc. 904, 962, 1028, 1034, 1077; c. 1262, s. 23; c. 1264, s. 1; 1975, cc. 566, 755; c. 764, s. 6; 1977, c. 771, s. 4; c. 782, s. 2; c. 1001, ss. 1, 2; 1977, 2nd Sess., c. 1200, s. 4; 1979, c. 200, s. 1; 1979, 2nd Sess., c. 1092; 1981, c. 86, s. 1; 1981 (Reg. Sess., 1982), c. 1244, ss. 1, 2; 1983, c. 643, ss. 1, 2; c. 693; 1983 (Reg. Sess., 1984), c. 1060; 1985, c. 510, s. 1; c. 656, s. 37; 1985 (Reg. Sess., 1986), c. 982, s. 18; 1987, c. 356; c. 622, s. 2; c. 747, s. 8; c. 777, s. 6; c. 813, ss. 5, 6, 22; c. 850, s. 17; 1987 (Reg. Sess., 1988), c. 1041, s. 1.1; 1989, c. 148, s. 4; c. 168, s. 6; c. 705; c. 723, s. 1; c. 727, ss. 28, 29; 1991, c. 717, s. 1; 1991 (Reg. Sess., 1992), c. 975, s. 2; 1993, c. 459, s. 2; 1993 (Reg. Sess., 1994), c. 745, s. 39; 1995, c. 41, s. 2; c. 509, s. 51; 1995 (Reg. Sess., 1996), c. 646, s. 12.)

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, substi-

tuted "38 U.S.C. § 2101" for "Title 38, section 801, United States Code Annotated" in subdivision (21).

§ 105-275.1. Reimbursement for exclusion of manufacturers' inventories and poultry and livestock.

(a) Initial Distribution. — On or before January 15, 1989, the governing body of each county and each city shall furnish to the Secretary a list of (i) all the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this Subchapter; (ii) all livestock and poultry and feed used in the production of livestock and poultry that was required to be listed and assessed as of January 1, 1987, and was listed on or before September 1, 1987, in the county or city under this Subchapter; (iii) all the crops and other agricultural or horticultural products held for sale, whether in process or ready for sale, owned by taxpayers regularly engaged in the growth, breeding, raising, or other production of new products for sale, that were not included under subdivision (ii) above and that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this Subchapter; (iv) in the case of a city, all the inventories owned by manufacturers that were located as of January 1, 1987, in an area for which the city began annexation proceedings before September 1, 1987, and which became a part of the city after January 1, 1987, and before January 1, 1988; and (v)

in the case of a city, all the inventories owned by manufacturers that were located as of January 1, 1987, in an area for which the city began annexation proceedings before September 1, 1987, and which became a part of the city after January 1, 1988, and before July 1, 1990. The list shall contain the value of the inventories and other items as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories owned by manufacturers and other items described in subdivisions (ii) and (iii) above that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in that district. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

On or before March 20, 1989, the Secretary shall pay to each county and city that submitted a list under this subsection an amount equal to the county or city average rate, as provided below, multiplied by the value of the inventories described in subdivisions (i) and (iv) above contained in the list submitted by the city or county, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

On or before March 20, 1989, the Secretary shall also pay to each county and city that submitted a list under this subsection an amount equal to the average rate, as provided below, for each special district for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

The Secretary shall calculate an average rate for each county and city, and for each special district whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, or district for the eight years from 1980 through 1987. If a county, city, or district did not have tax rates in effect for the entire eight-year period, the average rate shall be the arithmetic mean of the property rates in effect for the years during the eight-year period that it did have rates in effect.

Of the funds received by each county and city pursuant to this subsection, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories in the district) shall be distributed among the districts in the county or city as soon as practicable after the city or county receives funds under this

subsection. The county or city shall distribute to each special district in the county or city an amount equal to the average rate for the district multiplied by the value of the inventories owned by manufacturers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this paragraph. The Local Government Commission shall report to the 1990 General Assembly any errors it discovers in the information furnished by local governments to the Secretary as required in this subsection.

(b) Subsequent Distributions. — As soon as practicable after January 1, 1990, the Secretary shall pay to each county and city the amount it received under subsection (a) in 1989 plus an amount equal to the county or city average rate multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practicable after January 1, 1990, the Secretary shall also pay to each county and city an amount equal to the average rate for each special district for which the county or city collected taxes in 1987, but whose tax rates were not included in the county or city's rates, multiplied by the value of the items described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practicable after January 1, 1991, except as provided in subsection (f), the Secretary shall pay to each county and city the amount it received under this section the preceding year plus an amount equal to the county or city average rate multiplied by the value of the items described in subdivision (v) of subsection (a) contained in the list submitted by the county or city, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce. As soon as practical after January 1, 1992, except as provided in subsection (f), the Secretary shall distribute to each county and city the amount it received under this section the preceding year. On or before April 30, 1993, except as provided in subsection (f), the Secretary shall distribute to each county and city ninety-nine and eighty-one one-hundredths percent (99.81%) of the

amount it received under this section the preceding year. Thereafter, until August 1995, except as provided in subsection (f), on or before April 30 of each year, the Secretary shall distribute to each county and city the amount it received under this section the preceding year. On or before August 30, 1995, the Secretary shall determine for each county and city the amount it received in April 1995 under this section. Each year thereafter, except as provided in subsection (f), the Secretary shall distribute to each county and city fifty percent (50%) of this amount on or before September 30 and the remaining fifty percent (50%) on or before the following April 30.

Of the funds received by each county and city pursuant to this subsection in 1990, the portion that was received because the county or city was collecting taxes for a special district (either because the district's tax rate was included in the city or county's rate or because the Secretary paid the county or city the product of the district's average rate and the value of the inventories and other items in the district) shall be distributed among the districts in the county or city as soon as practicable after the city or county receives the funds. The county or city shall distribute to each special district in the county or city the amount it distributed to the district in 1989 plus an amount equal to the average rate for the district multiplied by the value of the items, other than inventory, described in subdivisions (ii) and (iii) of subsection (a) that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the district, plus or minus the percentage of this product that equals the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

Each year thereafter, until August 1995, as soon as practicable after receiving funds under this subsection, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to the amount it distributed among such districts the previous year. Each year thereafter, as soon as practical after receiving funds under this subsection in September, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to fifty percent (50%) of the amount it distributed among such districts in April 1995, and as soon as practicable after receiving funds under this subsection in April, every county and city shall distribute among the special districts for which the county or city collects tax an amount equal to fifty percent (50%) of the amount it distributed among such districts in April 1995.

The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this subsection. In addition, the Local Government Commission may adopt rules for the reallocation of funds when a special district is dissolved, merged, or consolidated, or when a special district ceases to levy tax, either temporarily or permanently.

(c) Use. — Funds received by a county, city, or special district under this section may be used for any lawful purpose.

(d) "City" Defined. — As used in this section, the term "city" has the same meaning as in G.S. 153A-1(1).

(e) Source of Funds. — To pay for the distribution required by this section and the cost to the Department of Revenue of making the

distribution, the Secretary of Revenue shall draw from collections received under Division I of Article 4 of this Chapter an amount equal to the amount distributed and the cost of making the distribution.

(f) **Correction of Errors.** — If the Secretary discovers that the amount or value of any inventories or other items listed by a county or city pursuant to subsection (a) of this section was overstated or understated, the Secretary shall adjust the amount to be distributed under subsection (b) as follows. For the distribution to be made in the year following discovery of the overstatement or understatement, the Secretary shall distribute to the county or city the amount it would have received under subsection (b) in 1993 if it had not overstated or understated the amount or value of any inventories or other items, plus the total amount it failed to receive in 1989 and subsequent years due to understatement of the amount or value of the inventories or other items, or minus the total amount it received in 1989 and subsequent years due to overstatement of the amount or value of the inventories or other items. Thereafter, each year the Secretary shall distribute to the county or city the amount it would have received under subsection (b) in 1993 if it had not overstated or understated the amount or value of any inventories or other items. (1987, c. 622, s. 7; c. 813, s. 7; 1987 (Reg. Sess., 1988), c. 1041, s. 1; 1989, c. 752, s. 52(d); 1989 (Reg. Sess., 1990), c. 1066, s. 29(b); 1991 (Reg. Sess., 1992), c. 993, ss. 2, 7; c. 1044, s. 9.5(a), (b); 1993, c. 321, s. 26(b); 1995 (Reg. Sess., 1996), c. 646, s. 13.)

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, in subsection (b), in the last sentence of the first paragraph, deleted "Beginning in August 1995 and" from the beginning, and made a related change, substituted "fifty percent (50%)" for "sixty percent (60%)" following "county and city", substituted "September 30" for "August 30", and sub-

stituted "fifty percent (50%)" for "forty percent (40%)" following "the remaining"; in the last sentence of the third paragraph, deleted "beginning in August 1995" following "Each year thereafter", substituted "September" for "August", substituted "fifty percent (50%)" for "sixty percent (60%)", and substituted "fifty percent (50%)" for "forty percent (40%)".

§ 105-277A. Reimbursement for exclusion of retailers' and wholesalers' inventories.

(a) **Submission of Claims.** — On or before January 15, 1989, the governing body of each county and city shall furnish to the Secretary a list of all the inventories owned by retailers and wholesalers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in the county or city under this Subchapter. The list shall contain the value of the inventories as well as the property tax rates in effect in the county or city for the eight years from 1980 through 1987. The list shall also contain the property tax rates in effect for those years in each special district for which the county or city collected taxes in 1987 but whose tax rates were not included in the rates listed for the county or city, and the value of the inventories owned by retailers and wholesalers that were required to be listed and assessed as of January 1, 1987, and were listed on or before September 1, 1987, in that district. The list shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary.

The Secretary shall calculate an average rate for each county and city, and for each special district whose tax rates were not included in the tax rates of a county or city, as the arithmetic mean of the property tax rates in effect in the county, city, or district for the eight years from 1980 through 1987. If a county, city, or district did not have tax rates in effect for the entire eight-year period, the average rate shall be the arithmetic mean of the property rates in effect for the years during the eight-year period that it did have rates in effect.

(b) First Per Capita Distribution. — As soon as practicable after January 1 of 1989, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum of fifteen million seven hundred forty-five thousand dollars (\$15,745,000). Thereafter, as soon as practicable after January 1 of 1990 and 1991, the Secretary shall distribute to each taxing unit the unit's per capita share of an amount equal to the sum distributed to all taxing units the previous year under this subsection plus or minus the product of the sum distributed the previous year and the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce.

On or before April 30 of 1992, 1993, 1994, and 1995, the Secretary shall distribute to each taxing unit the unit's per capita share of the sum that this subsection provided was to be distributed to all taxing units in 1991. Beginning August 1995 and each year thereafter, the Secretary shall determine for each taxing unit the unit's per capita share of the sum that this subsection provided was to be distributed to all taxing units in 1991. Each year, the Secretary shall distribute to each taxing unit fifty percent (50%) of this share on or before September 30 and the remaining fifty percent (50%) of this share on or before the following April 30.

To make the per capita distributions required by this subsection, the Secretary shall first allocate the sum to be distributed among the counties on a per capita basis. The Secretary shall then compute a per capita distributable amount for each county by dividing the amount allocated to a county by the total population of the county, plus the population of any incorporated towns and cities located in the county. Each taxing unit in a county, including the county itself, shall receive the product of the population of the taxing unit and the per capita distributable amount for that county.

A city or county that receives funds under this subsection and that collects taxes for another taxing unit shall distribute part of the taxes received by it to the taxing unit for which it collects tax. The distribution shall be made on the basis of the proportionate amount of ad valorem taxes levied, for the most recent fiscal year beginning July 1, by the city or county and by all the taxing units for which the city or county collects tax. This distribution shall be made as soon as practicable after a city or county receives funds from the State under this section.

(c) Second Per Capita Distribution. — On or before March 20, 1989, the Secretary shall allocate to each county the county's per capita share of the sum of thirty-nine million dollars (\$39,000,000).

Each year thereafter through April 1995, on or before April 30, the Secretary of Revenue shall allocate to each county the amount it received the previous year under this subsection. On or before

August 30, 1995, the Secretary shall determine for each county the amount it received in April 1995 under this subsection. Each year thereafter, the Secretary shall distribute fifty percent (50%) of this amount to each county on or before September 30 and the remaining fifty percent (50%) to each county on or before the following April 30.

Amounts allocated to a county under this subsection shall in turn be divided and distributed between the county and the cities located in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. For the purposes of this section, the amount of the ad valorem taxes levied by a county or city shall include any ad valorem taxes collected by the county or city in behalf of a special district. For the purpose of computing the distribution for any year with respect to which the property valuation of a public service company is the subject of an appeal and the Department of Revenue is restrained by law from certifying the valuation to the appropriate counties and cities, the Department shall use the latest property valuation of that public service company that has been certified.

The governing body of each county and city shall report to the Secretary of Revenue such information as he may request in order to make the distribution under this subsection. If a county or city fails to make a requested report within the time prescribed, the Secretary may disregard that county or city and the other taxing units in the county or city in making the distribution.

(c1) Claims-based Distribution. — On or before March 20, 1989, the Secretary shall distribute to each county and city an amount equal to the amount by which the county or city's inventory loss, as defined in subsection (d) of this section, exceeds the amount of the reimbursement received by the county or city under subsection (c) of this section.

Except as provided in subsection (g) of this section, each year thereafter through April 1995, on or before April 30, the Secretary shall distribute to each county and city the amount it received the previous year under this subsection. On or before August 30, 1995, the Secretary shall determine for each county and city the amount it received in April 1995 under this subsection. Each year thereafter, the Secretary shall distribute fifty percent (50%) of this amount to each county and city on or before September 30 and the remaining fifty percent (50%) of this amount to each county and city on or before the following April 30.

(c2) Supplemental Distribution. — On or before March 20, 1989, the Secretary shall determine, with respect to each county and city, whether the sum of (i) the amount the county or city received under subsection (c), plus (ii) the amount the county or city received under subsection (c1), plus (iii) three and four-tenths percent (3.4%) of the total distribution received by the county or city under G.S. 105-472, 105-486, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988, is less than ninety percent (90%) of the amount of taxes the county or city actually levied on inventories owned by retailers and wholesalers for the 1987-88 tax year. If that sum is less than ninety percent (90%) of the amount of taxes the county or city actually levied on those inventories for the 1987-88 tax year, the Secretary shall distribute to that county or city a supplemental amount equal to the amount by which ninety percent (90%) of the taxes it actually levied on inventories owned by retailers and wholesalers for the 1987-88 tax year exceeds the total of subdivisions (i), (ii), and (iii).

Except as provided in subsection (g) of this section, each year thereafter through April 1995, on or before April 30, the Secretary shall distribute to each county and city the amount it received the previous year under this subsection. On or before August 30, 1995, the Secretary shall determine for each county and city the amount it received in April 1995 under this subsection. Each year thereafter, the Secretary shall distribute fifty percent (50%) of this amount to each county and city on or before September 30 and the remaining fifty percent (50%) of this amount to each county and city on or before the following April 30.

(c3) Distribution to Special Districts. — Of the funds received by each county and city pursuant to subsections (c), (c1), and (c2) of this section, the portion that was received because the county or city was collecting taxes for a special district shall be distributed among the districts in the county or city in proportion to the amount of each special district's inventory levy, as defined in subsection (d) of this section, as soon as practicable after the city or county receives funds under this subsection. The Local Government Commission may adopt rules for the resolution of disputes and correction of errors in the distribution among special districts provided in this paragraph. In addition, the Local Government Commission may adopt rules for the reallocation of funds when a special district is dissolved, merged, or consolidated, or when a special district ceases to levy tax, either temporarily or permanently.

(d) Definitions. — The following definitions apply in this section:

(1) "City" has the same meaning as in G.S. 153A-1(1).

(2) "City's inventory loss" means the city's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the city, plus the average rate for each special district for which the city collected taxes in 1987, but whose tax rates were not included in the city's rates, multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district, plus or minus the percentage of this amount that equals the lesser of five percent (5%) or the percentage by which State personal income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce, minus three and four-tenths percent (3.4%) of the total distribution received by the city under G.S. 105-472, 105-486, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988.

(3) "County's inventory loss" means the county's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section by the county, plus the average rate for each special district for which the county collected taxes in 1987, but whose tax rates were not included in the county's rates, multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district, plus or minus the percentage of this amount that equals the lesser of five percent (5%) or the percentage by which State personal

income has increased or decreased during the most recent 12-month period for which State personal income data has been compiled by the Bureau of Economic Analysis of the United States Department of Commerce, minus three and four-tenths percent (3.4%) of the total distribution received by the county under G.S. 105-472, 105-486, 105-501, and Chapter 1096 of the 1967 Session Laws between January 1, 1988, and December 31, 1988.

- (4) "Special district's inventory levy" means the special district's average rate multiplied by eighty percent (80%) of the value of the inventories reported to the Secretary under subsection (a) of this section in behalf of the district.
- (5) "Taxing unit" means a unit that levied a property tax or for which another unit collected a property tax for the fiscal year preceding the fiscal year a distribution is made under this section.

(e) Population Estimates. — In making the per capita calculations under this section, the Secretary shall use the most recent annual population estimates certified by the State Planning Officer.

(f) Source of Funds. — To pay for the distribution required by this section and the cost of making the distribution, the Secretary shall draw from collections received under Division I of Article 4 of this Chapter an amount equal to the amount distributed and the cost of making the distribution.

(g) Correction of Errors. — If the Secretary discovers that the amount or value of any inventories listed by a county or city pursuant to subsection (a) of this section was overstated or understated, the Secretary shall adjust the amount to be distributed under subsections (c1) and (c2) as follows. For the distribution to be made in the year following discovery of the overstatement or understatement, the Secretary shall distribute to the county or city the amount it would have received under subsections (c1) and (c2) in 1989 if it had not overstated or understated the amount or value of any inventories, plus the total amount it failed to receive in 1989 and subsequent years due to understatement of the amount or value of the inventories, or minus the total amount it received in 1989 and subsequent years due to overstatement of the amount or value of the inventories. Thereafter, each year the Secretary shall distribute to the county or city the amount it would have received under subsections (c1) and (c2) in 1989 if it had not overstated or understated the amount or value of any inventories. (1985, c. 656, s. 53; 1985 (Reg. Sess., 1986), c. 947, ss. 7, 8; 1987, c. 622, s. 6; c. 813, ss. 10, 11; 1987 (Reg. Sess., 1988), c. 1041, s. 2; 1989, c. 752, s. 52(f); 1991, c. 689, s. 28(i), (j); 1991 (Reg. Sess., 1992), c. 993, ss. 3, 8; c. 1007, ss. 18, 19; 1993, c. 321, ss. 26(c)-(f), 26(j); c. 485, s. 16; 1995 (Reg. Sess., 1996), c. 646, s. 14.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1.5, effective January 1, 1997, and applicable to sales made on or after that date, amends Session Laws 1967, c. 1096, s. 4, by deleting the word "and" before subdivision (4), by changing the period at the end of subdivision (4) to a semicolon and adding the word "and", and by adding subdivision (5), which

reads "The sales price of food and other items that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee

Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1996, Second Extra Session, c. 13, s. 1.6, amends Session Laws 1967, c. 1096, s. 5, by substituting "The use tax that Mecklenburg County may impose under this division is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold but is used, consumed, or stored for use or consumption in Mecklenburg County. The tax applies to the same items that are subject to tax under Section 4 of this act" for the first sentence of section 5.

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, in the last sentence of the second paragraph of subsection (b), substituted "fifty percent (50%) of this share on or before September 30 and the remaining fifty percent

(50%)" for "sixty percent (60%) of this share on or before August 30 and the remaining forty percent (40%)" in the last sentence of the second paragraph of subsection (c), substituted "Each year thereafter, the Secretary shall distribute fifty percent (50%) of this amount to each county on or before September 30 and the remaining fifty percent (50%)" for "Beginning in August 1995 and each year thereafter, the Secretary shall distribute sixty percent (60%) of this amount to each county on or before August 30 and the remaining forty percent (40%)" in the last sentence of the second paragraph of subsections (c1) and (c2), substituted "Each year thereafter, the Secretary shall distribute fifty percent (50%) of this amount to each county and city on or before September 30 and the remaining fifty percent (50%)" for "Beginning in August 1995 and each year thereafter, the Secretary shall distribute sixty percent (60%) of this amount to each county and city on or before August 30 and the remaining forty percent (40%)" and deleted the last sentence of subsection (c3), which read "The Local Government Commission shall report to the 1990 General Assembly any errors it discovers in the information furnished by local governments to the Secretary as required in subsection (a) of this section."

§ 105-277.1. (Effective July 1, 1997) Property classified for taxation at reduced valuation.

(a) Exclusion. — The following class of property is designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. The first twenty thousand dollars (\$20,000) in appraised value of a permanent residence owned and occupied by a qualifying owner is excluded from taxation. A qualifying owner is an owner who meets all of the following requirements as of January 1 preceding the taxable year for which the benefit is claimed:

- (1) Is at least 65 years of age or totally and permanently disabled.
- (2) Has an income for the preceding calendar year of not more than fifteen thousand dollars (\$15,000).
- (3) Is a North Carolina resident.

An otherwise qualifying owner does not lose the benefit of this exclusion because of a temporary absence from his or her permanent residence for reasons of health, or because of an extended absence while confined to a rest home or nursing home, so long as the residence is unoccupied or occupied by the owner's spouse or other dependent.

(b) Definitions. — When used in this section, the following definitions shall apply:

- (1) Code. — The Internal Revenue Code, as defined in G.S. 105-228.90.

§ 105-277.1 has a delayed effective date. See notes.

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- (1a) **Income.** — Adjusted gross income, as defined in section 62 of the Code, plus all other moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses must be included, whether or not the property is in both names.
- (1b) **Owner.** — A person who holds legal or equitable title, whether individually, as a tenant by the entirety, a joint tenant, or a tenant in common, or as the holder of a life estate or an estate for the life of another. A manufactured home jointly owned by husband and wife is considered property held by the entirety.
- (2) Repealed by Session Laws 1993, c. 360, s. 1.
- (2a) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 982, s. 20.
- (3) **Permanent residence.** — A person's legal residence. It includes the dwelling, the dwelling site, not to exceed one acre, and related improvements. The dwelling may be a single family residence, a unit in a multi-family residential complex, or a manufactured home.
- (4) **Totally and permanently disabled.** — A person is totally and permanently disabled if the person has a physical or mental impairment that substantially precludes him or her from obtaining gainful employment and appears reasonably certain to continue without substantial improvement throughout his or her life.
- (c) **Application.** — An application for the exclusion provided by this section should be filed during the regular listing period, but may be filed and must be accepted at any time up to and through April 15 preceding the tax year for which the exclusion is claimed. When property is owned by two or more persons other than husband and wife and one or more of them qualifies for this exclusion, each owner shall apply separately for his or her proportionate share of the exclusion.
- (1) **Elderly Applicants.** — Persons 65 years of age or older may apply for this exclusion by entering the appropriate information on a form made available by the assessor under G.S. 105-282.1.
- (2) **Disabled Applicants.** — Persons who are totally and permanently disabled may apply for this exclusion by (i) entering the appropriate information on a form made available by the assessor under G.S. 105-282.1 and (ii) furnishing acceptable proof of their disability. The proof shall be in the form of a certificate from a physician licensed to practice medicine in North Carolina or from a governmental agency authorized to determine qualification for disability benefits. After a disabled applicant has qualified for this classification, he or she shall not be required to furnish an additional certificate unless the applicant's disability is reduced to the extent that the applicant could no longer be certified for the taxation at reduced valuation.
- (d) **Multiple Ownership.** — A permanent residence owned and occupied by husband and wife as tenants by the entirety is entitled to the full benefit of this exclusion notwithstanding that only one of

§ 105-277.1 has a delayed effective date. See notes.

them meets the age or disability requirements of this section. When a permanent residence is owned and occupied by two or more persons other than husband and wife and one or more of the owners qualifies for this exclusion, each qualifying owner is entitled to the full amount of the exclusion not to exceed his or her proportionate share of the valuation of the property. No part of an exclusion available to one co-owner may be claimed by any other co-owner and in no event may the total exclusion allowed for a permanent residence exceed the exclusion amount provided in this section. (1971, c. 932, s. 1; 1973, c. 448, s. 1; 1975, c. 881, s. 2; 1977, c. 666, s. 1; 1979, c. 356, s. 1; c. 846, s. 1; 1981, c. 54, s. 1; c. 1052, s. 1; 1985, c. 656, ss. 44, 45; 1985 (Reg. Sess., 1986), c. 982, ss. 19, 20; 1987, c. 45, s. 1; 1993, c. 360, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 15.1(a).)

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective

for taxes imposed for taxable years beginning on or after July 1, 1997, substituted "twenty thousand dollars (\$20,000)" for "fifteen thousand dollars (\$15,000)" in subsection (a); substituted "fifteen thousand dollars (\$15,000)" for "eleven thousand dollars (\$11,000)" in subdivision (a)(2); and substituted "the exclusion amount provided in this section" for "fifteen thousand dollars (\$15,000)" in subsection (d).

§ 105-277.1A. (Effective July 1, 1997) Property classified for taxation at reduced valuation; duties of tax collectors; reimbursement of localities for portion of tax lost.

(a) On September 1, 1990, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue a list containing the name and address of each person who has qualified in that year for the exemption provided in G.S. 105-277.1. The list shall also contain for each name the total amount of property exempted, the tax rate the property is subject to, and the product obtained by multiplying those two numbers by each other. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall all be on a form prescribed by the Secretary of Revenue.

(a1) On December 1, 1997, the tax collector of each county and the tax collector of each city shall furnish to the Secretary of Revenue two lists containing the name and address of each taxpayer who has qualified in that year for the exemption provided in G.S. 105-277.1. The first list shall include those taxpayers whose income was above eleven thousand dollars (\$11,000) and the second list shall include those taxpayers whose income was eleven thousand dollars (\$11,000) or less. On the first list, the tax collector shall provide for each name the total amount of property exempted and on the second list, the tax collector shall provide for each name the amount of property above fifteen thousand dollars (\$15,000) exempted. On both lists, the tax collector shall provide the tax rate the property is

§ 105-277.1A has a delayed effective date. See notes.

subject to and the product obtained by multiplying the tax rate by the amount of property. The lists shall be accompanied by an affidavit attesting to the accuracy of the list and shall be on a form prescribed by the Secretary of Revenue.

(b) Repealed by 1996, Second Extra Session, c. 18, s. 15.1(c), effective July 1, 1997.

(c) The Secretary of Revenue may, for cause, grant an extension for the submission of a list required by this section.

(d) Before May 31, 1991, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for the entire list provided pursuant to subsection (a) of this section of the product obtained by multiplying the tax exemption for each taxpayer times the applicable tax rate. Each year thereafter, on or before May 31, the Secretary of Revenue shall pay to each county and city that was entitled to receive a distribution under this subsection in 1991 the amount it was entitled to receive in 1991.

(d1) Before May 31, 1998, the Secretary of Revenue shall distribute to the county or city fifty percent (50%) of the total for both lists provided the preceding December 1 pursuant to subsection (a1) of this section of the product obtained by multiplying the applicable tax rate times the amount listed for each taxpayer. Before May 31, 1999, the Secretary of Revenue shall pay to each county and city the amount it received under this subsection in 1998.

(e) Any funds received by any county or city pursuant to this section because the county or city was collecting taxes for another unit of government or special district shall be credited to the funds of that other unit or district in accordance with regulations issued by the Local Government Commission.

(f) In order to pay for the reimbursement under this section and the cost to the Department of Revenue of administering the reimbursement, the Secretary of Revenue shall draw from collections received under Division I of Article 4 of this Chapter an amount equal to the reimbursement and the cost of administration. (1981, c. 1052, ss. 2-4; 1981 (Reg. Sess., 1982), c. 1282, s. 70.1; 1985, c. 656, ss. 46, 50; 1989, c. 752, s. 52(g); 1991, c. 689, s. 28(k); 1991 (Reg. Sess., 1992), c. 993, s. 4; 1996, 2nd Ex. Sess., c. 18, s. 15.1(c).)

For this section as in effect until July 1, 1997, see the main volume.

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. — The 1996 Second Extra Session amendment, effective

for taxes imposed for taxable years beginning on or after July 1, 1997, added subsections (a1) and (d1); deleted former subsection (b), which read "In addition to the list required by subsection (a) of this section, the county or city may provide a supplemental list on December 1"; substituted "a list" for "the list" in subsection (c); and in subsection (d) inserted "provided pursuant to subsection (a) of this section," and substituted "subsection" for "section" preceding "in 1991."

§ 105-277.2. Agricultural, horticultural, and forestland — Definitions.

The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

- (1) **Agricultural land.** — Land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program.
- (1a) **Business entity.** — A corporation, a general partnership, a limited partnership, or a limited liability company.
- (2) **Forestland.** — Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit shall be appraised under the use-value schedules as wasteland. A forest unit may consist of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a sound management program.
- (3) **Horticultural land.** — Land that is a part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes woodland and wasteland that is a part of the horticultural unit, but the woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program.
- (4) **Individually owned.** — Owned by one of the following:
 - a. **A natural person.** For the purpose of this section, a natural person who is an income beneficiary of a trust that owns land may elect to treat the person's beneficial share of the land as owned by that person. If the person's beneficial interest is not an identifiable share of land but can be established as a proportional interest in the trust income, the person's beneficial share of land is a percentage of the land owned by the trust that corresponds to the beneficiary's proportional interest in the trust income. For the purpose of this section, a natural person who is a member of a business entity, other than a corporation, that owns land may elect to treat the person's share of the land as owned by that person. The person's share is a percentage of the land owned by the business entity that corresponds to the person's percentage of ownership in the entity.

- b. A business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose members are all either a natural person actively engaged in the business of the entity or a relative of a member who is actively engaged in the business of the entity.
- c. A trust that was created by a natural person who transferred the land to the trust and each of whose beneficiaries who is currently entitled to receive income or principal meets one of the following conditions:
 - 1. Is the creator of the trust or the creator's relative.
 - 2. Is a second trust whose beneficiaries who are currently entitled to receive income or principal are all either the creator of the first trust or the creator's relatives.
- d. A testamentary trust that meets all of the following conditions:
 - 1. It was created by a natural person who transferred to the trust land that qualified in that person's hands for classification under G.S. 105-277.3.
 - 2. At the time of the creator's death, the creator had no relatives as defined in this section as of the date of death.
 - 3. The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes as defined in G.S. 105-278.3(d).
- (4a) Member. — A shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.
- (5) Present-use value. — The value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income, using a rate of nine percent (9%) to capitalize the expected net income of the property and assuming an average level of management.
- (5a) Relative. — Any of the following:
 - a. A spouse or the spouse's lineal ancestor or descendant.
 - b. A lineal ancestor or a lineal descendant.
 - c. A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.
 - d. An aunt or an uncle.
 - e. A spouse of a person listed in paragraphs a. through d. For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term "spouse" includes a surviving spouse.
- (6) Sound management program. — A program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement. (1973, c. 709, s. 1; 1975, c. 746, s. 1; 1985, c. 628, s. 1; c. 667, ss. 1, 4; 1987, c. 698, s. 1; 1995, c. 454, s. 1; 1995 (Reg. Sess., 1996), c. 646, s. 17.)

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amend-

ment, effective June 21, 1996, substituted "entity, other than a corporation"

for "entity" in the next-to-last sentence of subdivision (4)a.

§ 105-278.3. Real and personal property used for religious purposes.

CASE NOTES

Church Camp. — Where there was substantial evidence that the primary purpose of camp was to serve the religious and spiritual needs of the members of church, the fact that others were permitted to use the camp and that some were charged a fee was not determinative. In re Mount Shepherd Methodist Camp, 120 N.C. App. 388, 462 S.E.2d 229 (1995).

Natural Areas of Church Camp. — Property Tax Commission did not err as a matter of law in concluding that the natural areas of Church Camp, where no improvements were located, were properly within the scope of this section. In re Mount Shepherd Methodist Camp, 120 N.C. App. 388, 462 S.E.2d 229 (1995).

§ 105-278.7. Real and personal property used for educational, scientific, literary, or charitable purposes.

(a) Buildings, the land they actually occupy, and additional adjacent land necessary for the convenient use of any such building shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

- (1) Wholly and exclusively used by its owner for nonprofit educational, scientific, literary, or charitable purposes as defined in subsection (f), below; or
- (2) Occupied gratuitously by an agency listed in subsection (c), below, other than the owner, and wholly and exclusively used by the occupant for nonprofit educational, scientific, literary, or charitable purposes.

(b) Personal property shall be exempted from taxation if wholly owned by an agency listed in subsection (c), below, and if:

- (1) Wholly and exclusively used by its owner for nonprofit educational, scientific, literary, or charitable purposes; or
- (2) Gratuitously made available to an agency listed in subsection (c), below, other than the owner, and wholly and exclusively used by the possessor for nonprofit educational, scientific, literary, or charitable purposes.

(c) The following agencies, when the other requirements of this section are met, may obtain property tax exemption under this section:

- (1) A charitable association or institution,
- (2) An historical association or institution,
- (3) A veterans' organization or association,
- (4) A scientific association or institution,
- (5) A literary association or institution,
- (6) A benevolent association or institution, or
- (7) A nonprofit community or neighborhood organization.

(d) Notwithstanding the exclusive-use requirements of subsection (a), above, if part of a property that otherwise meets the subsection's requirements is used for a purpose that would require exemption if the entire property were so used, the valuation of the part so used shall be exempted from taxation.

(e) The fact that a building or facility is incidentally available to and patronized by the general public, so long as there is no material amount of business or patronage with the general public, shall not defeat the exemption granted by this section.

(f) Within the meaning of this section:

- (1) An educational purpose is one that has as its objective the education or instruction of human beings; it comprehends the transmission of information and the training or development of the knowledge or skills of individual persons.
- (2) A scientific purpose is one that yields knowledge systematically through research, experimentation, or other work done in one or more of the natural sciences.
- (3) A literary purpose is one that pertains to letters or literature (including drama), especially writing, publishing, and the study of literature.
- (4) A charitable purpose is one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward. The humane treatment of animals is also a charitable purpose. (1973, c. 695, s. 4; 1995 (Reg. Sess., 1996), c. 646, s. 15.)

Effect of Amendments. — The 1995 June 21, 1996, substituted “(f)” for “(e)” (Reg. Sess., 1996) amendment, effective in subdivision (a)(1).

§ 105-282.1. Applications for property tax exemption or exclusion.

(a) Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden of establishing that the property is entitled thereto. Except as provided below, an owner claiming exemption or exclusion shall annually file an application for exemption or exclusion during the listing period. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. An application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

- (1) The United States government, the State of North Carolina and the counties and municipalities of the State are exempted from the requirement that owners file applications for exemption.
- (2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (15), (16), (26), (31), (31a), (31b), (31c), (31d), (32a), (33), (34), or (40), or exempted under G.S. 105-278.2 are not required to file applications for the exclusion or exemption of that property.
- (3) After an owner of property entitled to exemption under G.S. 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8 or exclusion under G.S. 105-275(3), (7), (8), (12),

(17) through (19), (21) or (39), G.S. 105-277.1, or G.S. 105-278 has applied for exemption or exclusion and the exemption or exclusion has been approved, the owner is not required to file an application in subsequent years except in the following circumstances:

- a. New or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the property; or
 - b. There is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the exemption or exclusion.
- (4) After an owner of property entitled to exclusion under G.S. 105-277.10 has applied for the exclusion and the exclusion has been approved, the owner is not required to apply for the exclusion in subsequent years so long as the classified property, including classified property acquired after the application is approved, is used or held for use directly in manufacturing or processing as part of industrial machinery.
- (5) Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion approved under this subdivision applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed.

(b) The Department of Revenue or the assessor to whom an application for exemption or exclusion is submitted shall review the application and either approve or deny the application. Approved applications shall be filed and made available to all taxing units in which the exempted or excluded property is situated. If the Department denies an application for exemption or exclusion, it shall notify the taxpayer, who may appeal the denial to the Property Tax Commission.

If an assessor denies an application for exemption or exclusion, he shall notify the owner of his decision in time for him to appeal to the board of equalization and review and from the county board to the Property Tax Commission. If the notice of denial covers property located within a municipality, the assessor shall send a copy of the notice and a copy of the application to the governing body of the municipality. The municipal governing body shall then advise the owner whether it will adopt the decision of the county board or require the owner to file a separate appeal with the municipal governing body. In the event the owner is required to appeal to the municipal governing body and that body renders an adverse decision, the owner may appeal to the Property Tax Commission. Nothing in this section shall prevent the governing body of a municipality from denying an application which has been approved by the assessor or by the county board provided the owner's rights to notice and hearing are not abridged. Applications handled separately by a municipality shall be filed in the office of the person designated by the governing body, or in the absence of such designation, in the office of the chief fiscal officer of the municipality.

(c) When an owner of property that may be eligible for exemption or exclusion neither lists the property nor files an application for exemption or exclusion, the assessor or the Department of Revenue, as appropriate, shall proceed to discover the property. If, upon appeal, the owner demonstrates that the property meets the conditions for exemption or exclusion, the body hearing the appeal may approve the exemption or exclusion. Discovery of the property by the Department or the county shall automatically constitute a discovery by any taxing unit in which the property has a taxable situs.

(d) The county assessor shall prepare and maintain a roster of all property in the county that is granted tax relief through classification or exemption. As to affected real and personal property, the roster shall set forth:

- (1) The name of the owner of the property.
- (2) A brief description of the property.
- (3) A statement of the use to which the property is put.
- (4) A statement of the value of the property.
- (5) The total value of exempt property in the county and in each municipality therein.

(e) A duplicate copy of the roster shall be forwarded to the Department of Revenue on or before November 1, 1974. In subsequent years, on or before November 1, a report shall be filed with the Department of Revenue showing all changes since the last report. (1973, c. 695, s. 8; c. 1252; 1981, c. 54, ss. 2, 3; c. 86, s. 2; c. 915; 1985 (Reg. Sess., 1986), c. 982, s. 22; 1987, c. 45, s. 1; c. 295, ss. 5, 6; c. 680, ss. 1-3; c. 813, s. 13; 1989, c. 674, s. 2; c. 723, s. 2; 1991, c. 34, s. 1; 1991 (Reg. Sess., 1992), c. 975, s. 3; 1993, c. 459, s. 3; 1995, c. 41, s. 7; 1995 (Reg. Sess., 1996), c. 646, s. 16.)

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, substituted “under G.S. 105-275(3), (7), (8),

(12), (17) through (19), (21) or (39), G.S. 105.277.1, or” for “under G.S. 105-275(3), (7), (12), or (39), G.S. 105-277.1 or” in subdivision (a)(3).

ARTICLE 13.

Standards for Appraisal and Assessment.

§ 105-283. Uniform appraisal standards.

CASE NOTES

Income Approach. — The income approach should have been the primary method used to reach a value for the anchor store in a shopping mall; while the income approach is preferential, a combination of approaches may be used because of the inherent weaknesses in each approach, so long as the income

approach is given greatest weight. In re Belk-Broome Co., 119 N.C. App. 470, 458 S.E.2d 921 (1995), aff’d, 342 N.C. 890, 467 S.E.2d 242 (1996).

Applied in In re May Dep’t Stores Co., 119 N.C. App. 596, 459 S.E.2d 274 (1995).

ARTICLE 17.

*Administration of Listing.***§ 105-307. Length of listing period; extension; preliminary work.**

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 691, s. 2, provides: "Notwithstanding G.S. 105-307, an individual required to list property for taxation for the 1996-97 tax year or a subsequent tax year who, on or after December 4, 1995, was a member of the armed forces or the armed forces reserves and was deployed outside the State in connection with performing 'Operation Joint Endeavor services', is allowed 90 days after the end of the individual's deployment to list the property. For these individuals, the listing period for the applicable tax year is extended until the end of the 90-day period provided in this act, and an individual who lists the property before the end of the 90-day period is not subject to civil or

criminal penalties for failure to list the property for that tax year. If the individual owns property jointly or by the entirety with his or her spouse, the extension provided in this section applies to both spouses."

Session Laws 1995 (Reg. Sess., 1996), c. 691, s. 3, provides that as used in that act the term "Operation Joint Endeavor services" has the meaning provided in federal Pub. L. No. 104-117 (1996).

Session Laws 1995 (Reg. Sess., 1996), c. 691, s. 4, provides: "This act is effective retroactively as of December 4, 1995. If any penalty or interest forgiven by this act has been paid before the date this act is ratified [June 21, 1996], the taxing unit shall refund the penalty or interest."

§ 105-309. What the abstract shall contain.

(a) Each person whose duty it is to list property for taxation shall file each year with the assessor a tax list or abstract showing, as of the date prescribed by G.S. 105-285(b), the information required by this section. Subject to the provisions of subdivisions (a)(1) and (a)(2), below, each person whose duty it is to list property for taxation shall file a separate abstract.

- (1) Tenants by the entirety shall file a single abstract listing the real property so held, together with all personal property they own jointly.
- (2) Tenants in common shall file a single abstract listing the real property so held, together with all personal property that they own jointly, unless, as provided in G.S. 105-302(c)(9), the assessor allows them to list their undivided interests in the real property on separate abstracts.

(b) Each abstract shall show the taxpayer's name; residence address; and, if required by the assessor, business address.

- (1) An individual trading under a firm name shall show his name and address and also the name and address of his business firm.
- (2) An unincorporated association shall show both the name and address of the association and the names and addresses of its principal officers.
- (3) A partnership shall show both the name and address of the partnership and the names and addresses of its full partners.

(c) Each tract, parcel, or lot of real property owned or controlled in the county shall be listed in accordance with the following instructions:

- (1) Real property not divided into lots shall be described by giving:
 - a. The township in which located.
 - b. The total number of acres in the tract, or, if smaller than one acre, the dimensions of the parcel.
 - c. The tract name (if any), the names of at least two adjoining landowners, a reference to the tract's designation on any map maintained in the office of the assessor or on file in the office of the register of deeds, or some other description sufficient to identify and locate the property by parol testimony.
 - d. If applicable, the number of acres of:
 1. Cleared land;
 2. Woods and timberland;
 3. Land containing mineral or quarry deposits;
 4. Land susceptible of development for waterpower;
 5. Wasteland.
 - e. The portion of the tract or parcel located within the boundaries of any municipality.
- (2) Real property divided into lots shall be described by giving:
 - a. The township in which located.
 - b. The dimensions of the lot.
 - c. The location of the lot, including its street number (if any).
 - d. The lot's designation on any map maintained in the office of the assessor or on file in the office of the register of deeds, or some description sufficient to identify and locate the property by parol testimony.
 - e. The portion of the lot located within the boundaries of any municipality.
- (3) In conjunction with the listing of any real property under subdivisions (c)(1) and (c)(2), above, there shall be given a short description of any buildings and other improvements thereon that belong to the owner of the land.
- (4) Buildings and other improvements having a value in excess of one hundred dollars (\$100.00) that have been acquired, begun, erected, damaged, or destroyed since the time of the last appraisal of property shall be described.
- (5) If some person other than the owner of a tract, parcel, or lot shall own any buildings or other improvements thereon or separate rights (such as mineral, quarry, timber, waterpower, or other rights) therein, that fact shall be specified on the abstract on which the land is listed, together with the name and address of the owner of the buildings, other improvements, or rights.
 - a. Buildings, other improvements, and separate rights owned by a taxpayer with respect to the lands of another shall be listed separately and identified so as to indicate the name of the owner thereof and the tract, parcel, or lot on which the buildings or other improvements are situated or to which the separate rights appertain.
 - b. In accordance with the provisions of G.S. 105-302(c)(11), buildings or other improvements or separate rights owned by a taxpayer with respect to the lands of another may be listed either in the name of the owner

of the buildings, other improvements, or rights, or in the name of the owner of the land.

(d) Personal property shall be listed to indicate the township and municipality, if any, in which it is taxable and shall be itemized by the taxpayer in such detail as may be prescribed by an abstract form approved by the Department of Revenue. Personal property shall also be listed to indicate which property, if any, is subject to a tax credit under Division IV of Article 4 of this Chapter.

(1) If the assessor considers it necessary to obtain a complete listing of personal property, he may require a taxpayer to submit additional information, inventories, or itemized lists of personal property.

(2) At the request of the assessor, the taxpayer shall furnish any information he may have with respect to the true value of the personal property he is required to list.

(e) At the end of the abstract each person whose duty it is to list property for taxation shall sign the affirmation required by G.S. 105-310.

(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

“PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first twenty thousand dollars (\$20,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed fifteen thousand dollars (\$15,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above fifteen thousand dollars (\$15,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.”

(g) Any person who fails to give the notice required by G.S. 105-309(f) shall not only be subject to loss of the exemption, but also to the penalties provided by G.S. 105-312, and also if willful to the penalty provided in G.S. 105-310. For the purpose of determining

whether a penalty is levied, whenever a taxpayer has received an exemption under G.S. 105-277.1 for one taxable year but the property of taxpayer is not eligible for the exemption the next year, notice given of that fact to the assessor on or before April 15 shall be considered as timely filed. (1939, c. 310, s. 900; 1941, c. 221, s. 1; 1953, c. 970, s. 6; 1955, c. 34; 1971, c. 806, s. 1; 1973, c. 448, s. 2; c. 476, s. 193; 1975, c. 881, s. 3; 1977, c. 666, s. 2; 1979, c. 846, s. 2; 1981, c. 54, ss. 4-6; c. 1052, s. 1; 1985, c. 656, ss. 47, 51; 1985 (Reg. Sess., 1986), c. 947, s. 9; c. 982, s. 23; 1987, c. 43, s. 6; c. 45, s. 1; 1993, c. 360, s. 2; 1996, 2nd Ex. Sess., c. 18, s. 15.1(b).)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. —

The 1996 Second Extra Session

amendment, effective for taxes imposed for taxable years beginning on or after July 1, 1997, in subsection (f) substituted "twenty thousand dollars (\$20,000)" for "fifteen thousand dollars (\$15,000)," and twice substituted "fifteen thousand dollars (\$15,000)" for "eleven thousand dollars (\$11,000)."

ARTICLE 19.

Administration of Real and Personal Property Appraisal.

§ 105-317. Appraisal of real property; adoption of schedules, standards, and rules.

CASE NOTES

Net income produced is an element, etc. —

The income approach should have been the primary method used to reach a value for the anchor store in a shopping mall; while the income approach is preferential a combination of approaches may be used because of the inherent weaknesses in each approach, so long as the income approach is given greatest weight. In re Belk-Broome Co., 119 N.C. App. 470, 458 S.E.2d 921 (1995), aff'd,

342 N.C. 890, 467 S.E.2d 242 (1996).

Equalization of Property Improper. — It was not the Commission's place to equalize property values between anchor store property and the surrounding property in a shopping mall; in doing so, the Commission exceeded its authority and committed an error of law. In re Belk-Broome Co., 119 N.C. App. 470, 458 S.E.2d 921 (1995), aff'd, 342 N.C. 890, 467 S.E.2d 242 (1996).

ARTICLE 21.

Review and Appeals of Listings and Valuations.

§ 105-322. County board of equalization and review.

Local Modification. — Rockingham: 1995 (Reg. Sess., 1996), c. 617, s. 1.

ARTICLE 22A.

*Motor Vehicles.***§ 105-330.2. Appraisal, ownership, and situs.**

(a) The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be determined as follows:

- (1) For a vehicle registered under the staggered system, the value shall be determined annually as of January 1 preceding the date a new registration is applied for or the current registration expires.
- (2) For a vehicle newly registered under the annual system, the value shall be determined as of January 1 of the year the new registration is obtained. For a vehicle whose registration is renewed under the annual system, the value shall be determined as of January 1 following the date the registration expires.

If the value of a new motor vehicle cannot be determined as of date specified above, the value of that vehicle shall be determined for that year as of the date that model vehicle is first offered for sale at retail in this State. The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) shall be determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed, regardless of whether the registration is renewed after it has expired.

The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed pursuant to G.S. 105-330.3(a)(2). The ownership, situs, and taxability of a classified motor vehicle listed or discovered pursuant to G.S. 105-330.3(a)(2) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed.

(b) A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. The owner of a classified motor vehicle may appeal the appraised value of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value with the assessor within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5. Notwithstanding G.S. 105-312(d), an owner who appeals the appraised value of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

(c) The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles, shall enter into a memorandum of understanding concerning the vehicle identification information, name and address of the owner, and other information that will be required on the motor vehicle registration forms to implement the tax listing and collection provisions of this Article. (1991, c. 624, s. 1; 1991 (Reg. Sess., 1992), c. 961, s. 4; 1995, c. 510, s. 1; 1995 (Reg. Sess., 1996), c. 646, s. 24.)

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, in subsection (a), inserted “as follows” in the first sentence; added the subdivision (1) designation, added “For a vehicle registered under the staggered system, the value

shall be determined” to the beginning of subdivision (1); inserted subdivision (2); substituted “date specified above” for “January 1 preceding the date the new registration is applied for” in the first sentence of the second paragraph; and made related changes.

§ 105-330.4. Due date, interest, and enforcement remedies.

Editor’s Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 691, s. 1, provides: “Notwithstanding G.S. 105-360 and G.S. 105-330.4, an individual liable for property taxes for the 1995-96 tax year or a subsequent tax year who, on or after December 4, 1995, was a member of the armed forces or the armed forces reserves and was deployed outside the State in connection with performing ‘Operation Joint Endeavor services’, is allowed 90 days after the end of the individual’s deployment to pay the property taxes at par. For these individuals, the taxes do not become delinquent until after the end of the 90-day period provided in this act, and an individual who pays the property taxes before the end of the 90-day period is not liable for interest on the taxes for the applicable tax year. If the individual does not pay the taxes before the end of the 90-day

period, interest shall accrue on the taxes according to the schedule provided in G.S. 105-360 or G.S. 105-330.4, as appropriate, as if no grace period had been allowed under this act. If the individual owns property jointly or by the entirety with his or her spouse, the extension provided in this section applies to both spouses.”

Session Laws 1995 (Reg. Sess., 1996), c. 691, s. 3, provides that as used in that act the term “Operation Joint Endeavor services” has the meaning provided in federal Pub. L. No. 104-117 (1996).

Session Laws 1995 (Reg. Sess., 1996), c. 691, s. 4, provides: “This act is effective retroactively as of December 4, 1995. If any penalty or interest forgiven by this act has been paid before the date this act is ratified [June 21, 1996], the taxing unit shall refund the penalty or interest.”

ARTICLE 23.

Public Service Companies.

§ 105-333. Definitions.

The following definitions apply in this Article unless the context requires a different meaning:

- (1) **Airline company.** — A company engaged in the business of transporting passengers and property by aircraft for hire within, into, or from this State.
- (2) **Bus line company.** — A company engaged in the business of transporting passengers and property by motor vehicle for hire over the public highways of this State (but not including a bus line company operating primarily upon the public streets within a single local taxing unit), whether the transportation is within, into, or from this State.
- (3) **Distributable system property.** — All real property and tangible and intangible personal property owned or used by a railroad company other than nondistributable system property.
- (4) **Electric membership corporation.** — A company organized, reorganized, or domesticated under Chapter 117 of the General Statutes and engaged in the business of supplying

- electricity for light, heat, or power to consumers in this State.
- (5) Electric power company. — A company engaged in the business of supplying electricity for light, heat, or power to consumers in this State.
 - (6) Repealed by Session Laws 1973, c. 783, s. 5.
 - (7) Flight equipment. — Aircraft fully equipped for flying and used in any operation within this State.
 - (8) Gas company. — A company engaged in the business of supplying artificial or natural gas to, from, within, or through this State through pipe or tubing for light, heat, or power to consumers in this State.
 - (9) Locally assigned rolling stock. — Rolling stock that is owned or leased by a motor freight carrier company, specifically assigned to a terminal or other premises, and regularly used at the premises to which assigned.
 - (10) Motor freight carrier company. — A company engaged in the business of transporting property by motor vehicle for hire over the public highways of this State as provided in this subdivision:
 - a. As to interstate carrier companies domiciled in North Carolina, this term includes carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier outside this State or two or more terminals inside this State. For purposes of appraisal and allocation only, the term also includes a North Carolina interstate carrier that does not have a terminal outside this State but whose operations outside the State are sufficient to require the payment of ad valorem taxes on a portion of the value of the rolling stock of the carrier to taxing units in one or more other states.
 - b. As to interstate carrier companies domiciled outside this State, this term includes carriers who regularly transport property by tractor trailer to or from one or more terminals owned or leased by the carrier inside this State.
 - c. As to intrastate carrier companies, this term includes only those carriers that are engaged in the transportation of property by tractor trailer to or from two or more terminals owned or leased by the carrier in this State.
 - (11) Nondistributable system property. — The following properties owned by a railroad company: land other than right-of-way, depots, machine shops, warehouses, office buildings, other structures, and the contents of the structures listed in this subdivision.
 - (12) Nonsystem property. — The real and tangible personal property owned by a public service company but not used in its public service activities.
 - (13) Pipeline company. — A company engaged in the business of transporting natural gas, petroleum products, or other products through pipelines to, from, within, or through this State, or having control of pipelines for such a purpose.
 - (14) Public service company. — A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, a

telegraph company, a bus line company, an airline company, and any other company performing a public service that is regulated by the Interstate Commerce Commission, the Federal Power Commission, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, a radio common carrier company as defined in G.S. 62-119(3), a cable television company, or a radio or television broadcasting company. The term also includes a motor freight carrier company. For purposes of appraisal under this Article, the term also includes a pipeline company whether or not it performs a public service and whether or not it is regulated by one of the regulatory agencies named in this subdivision.

- (15) Railroad company. — A company engaged in the business of operating a railroad to, from, within or through this State on rights-of-way owned or leased by the company. It also means a company operating a passenger service on the lines of any railroad located wholly or partly in this State.
- (16) Rolling stock. — Motor vehicles, railroad locomotives, and railroad cars that are propelled by mechanical or electrical power and used upon the highways or, in the case of railroad vehicles, upon tracks.
- (17) System property. — The real property and tangible and intangible personal property used by a public service company in its public service activities. The term also includes public service company property under construction on the day as of which property is assessed which when completed will be used by the owner in its public service activities.
- (18) Telegraph company. — A company engaged in the business of transmitting telegraph messages to, from, within, or through the State.
- (19) Telephone company. — A company engaged in the business of transmitting telephone messages and conversations to, from, within, or through this State.
- (20) Repealed by Session Laws 1973, c. 783, s. 5. (1939, c. 310, ss. 1600-1605; 1943, c. 634, s. 3; 1965, c. 287, s. 17; 1971, c. 806, s. 1; c. 1121, s. 4; 1973, c. 198; c. 783, ss. 1-5; c. 1180; 1991 (Reg. Sess., 1992), c. 961, s. 1; 1995, c. 350, ss. 1, 2; 1995 (Reg. Sess., 1996), c. 646, s. 18.)

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, substituted "The following definitions apply" for "When used" in the first sentence; substituted "A" for "means a public service" following the defined term in subdivisions (1), (2), (4), (5), (8), (13), (15), (18), and (19), and made related changes; deleted "means" following the defined term in subdivisions (3), (7), (9), (10), (11), (12), (14), (16), and (17), and made related changes; substituted "is" for "be" following "whether the transportation" in subdivision (2); in subdivision (4), de-

leted "which is" following "A company", deleted "the provisions of" following "or domesticated under", and deleted "which is" following "General Statutes and"; substituted "land" for "Land" in subdivision (11); in subdivision (14), inserted "a" preceding "railroad company", "pipeline company", "gas company", "telephone company", "telegraph company", and "bus line company", and inserted "an" preceding "electric power company", "electric membership corporation", and "airline company"; and substituted "The term also includes" for "It also means" in the second sentence of subdivision (17).

§ 105-342. (See editor's note) Notice, hearing, and appeal.

Editor's Note. — The following note was inadvertently omitted from the main pamphlet:

Session Laws 1987 (Reg. Sess., 1988), c. 1052, s. 1, effective January 1, 1988, rewrote section 5 of Session Laws 1985, c. 601, section 4 of which act repeals subsection (c) of this section, to read:

"Sec. 5. Sections 1 and 3 of this act shall become effective January 1, 1987; provided that as to any public service company whose property values in a county are adjusted in the third year after the year of reappraisal of real property in the county pursuant to G.S. 105-342(c) and whose property values in the same county are adjusted in the follow-

ing year pursuant to Section 1 of this act, a county shall be entitled in such following year to increase the property values of the public service company certified to the county by the Department of Revenue by the same amount as the public service company property values were reduced the preceding year pursuant to G.S. 105-342(c). Sections 2 and 5 are effective upon ratification. Section 4 shall become effective in each county as of January 1 of the year in which sales assessment ratio studies are first required to be conducted in the county by the Department of Revenue under Section 1."

ARTICLE 24.

Review and Enforcement of Orders.

§ 105-345.2. Record on appeal; extent of review.

CASE NOTES

Authority Exceeded. — It is not the Commission's place to equalize property values between anchor store property and the surrounding property in a shopping mall; thus in doing so, the Commission exceeded its authority and committed an error of law. *In re Belk-Broome*

Co., 119 N.C. App. 470, 458 S.E.2d 921 (1995), aff'd, 342 N.C. 890, 467 S.E.2d 242 (1996).

Applied in *In re Mount Shepherd Methodist Camp*, 120 N.C. App. 388, 462 S.E.2d 229 (1995).

ARTICLE 26.

Collection and Foreclosure of Taxes.

§ 105-349. Appointment, term, qualifications, and bond of tax collectors and deputies.

Local Modification. — Havelock: 1995 (Reg. Sess., 1996), c. 619, s. 1.

§ 105-360. Due date; interest for nonpayment of taxes; discounts for prepayment.

Editor's Note. —

Session Laws 1995 (Reg. Sess., 1996), c. 691, s. 1, provides: "Notwithstanding G.S. 105-360 and G.S. 105-330.4, an individual liable for property taxes for the

1995-96 tax year or a subsequent tax year who, on or after December 4, 1995, was a member of the armed forces or the armed forces reserves and was deployed outside the State in connection with per-

forming 'Operation Joint Endeavor services', is allowed 90 days after the end of the individual's deployment to pay the property taxes at par. For these individuals, the taxes do not become delinquent until after the end of the 90-day period provided in this act, and an individual who pays the property taxes before the end of the 90-day period is not liable for interest on the taxes for the applicable tax year. If the individual does not pay the taxes before the end of the 90-day period, interest shall accrue on the taxes according to the schedule provided in G.S. 105-360 or G.S. 105-330.4, as appropriate, as if no grace period had been allowed under this act. If the individual

owns property jointly or by the entirety with his or her spouse, the extension provided in this section applies to both spouses."

Session Laws 1995 (Reg. Sess., 1996), c. 691, s. 3, provides that as used in that act the term "Operation Joint Endeavor services" has the meaning provided in federal Pub. L. No. 104-117 (1996).

Session Laws 1995 (Reg. Sess., 1996), c. 691, s. 4, provides: "This act is effective retroactively as of December 4, 1995. If any penalty or interest forgiven by this act has been paid before the date this act is ratified [June 21, 1996], the taxing unit shall refund the penalty or interest."

SUBCHAPTER V. MOTOR FUEL TAXES.

ARTICLE 36B.

Tax on Carriers Using Fuel Purchased Outside State.

§ 105-449.43. Application of tax proceeds.

Editor's Note. —

Session Laws 1989, c. 692, s. 8.4, as amended by Session Laws 1995 (Reg. Sess., 1996), c. 590, s. 7, provides that when contracts for all projects specified in Article 14 of Chapter 136 have been let and sufficient revenue has been accumulated to pay the contracts, the Secretary of Transportation shall certify this occurrence by letter to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Secretary of State, which contingency is not expected to occur until some years after the date of enactment. Proceeds of bonds and notes issued pursuant to the State

Highway Bond Act of 1996 shall not be included as revenues accumulated to pay the contracts for projects specified in Article 14 of Chapter 136 of the General Statutes. This section shall be amended by providing that all revenue collected under this Article be credited to the Highway Fund, effective the first day of the calendar quarter following the date the Secretary sends the letter, unless there is less than 30 days between that date and the first day of the following quarter, in which case the amendment will become effective the first day of the second calendar quarter following the date the letter is sent.

§ 105-449.57. Cooperative agreements between jurisdictions.

The Secretary may enter into cooperative agreements with other jurisdictions for exchange of information in administering the tax imposed by this Article. No agreement, arrangement, declaration, or amendment to an agreement is effective until stated in writing and approved by the Secretary.

An agreement may provide for determining the base state for motor carriers, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of gasoline or other motor fuel taxes and

penalties to another jurisdiction, and such other provisions as will facilitate the administration of the agreement.

In accordance with G.S. 105-259, the Secretary may, as required by the terms of an agreement, forward to officials of another jurisdiction any information in the Department's possession relative to the use of gasoline or other motor fuels by any motor carrier. The Secretary may disclose to officials of another jurisdiction the location of offices, motor vehicles, and other real and personal property of motor carriers.

An agreement may provide for each jurisdiction to audit the records of motor carriers based in the jurisdiction to determine if the gasoline or other motor fuel taxes due each jurisdiction are properly reported and paid. Each jurisdiction shall forward the findings of the audits performed on motor carriers based in the jurisdiction to each jurisdiction in which the carrier has taxable use of gasoline or other motor fuels. For motor carriers not based in this State who have taxable use of gasoline or other motor fuels in this State, the Secretary may utilize the audit findings received from another jurisdiction as the basis upon which to propose assessments of gasoline or other motor fuel taxes against the carrier as though the audit had been conducted by the Secretary. Penalties and interest shall be assessed at the rates provided in the agreement.

No agreement entered into pursuant to this section may preclude the Department from auditing the records of any motor carrier covered by this Chapter.

The provisions of Article 9 of this Chapter apply to any assessment or order made under this section.

The Secretary may not enter into any agreement that would increase or decrease taxes and fees imposed under Subchapter V of Chapter 105 of the General Statutes, and any provision to the contrary is void. (1989, c. 667, s. 1; 1993, c. 485, s. 36; 1995 (Reg. Sess., 1996), c. 647, s. 50.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted "jurisdictions" for "states" in the section catchline and

in the first paragraph, and substituted "jurisdiction" for "state" throughout the third and fourth paragraphs.

ARTICLE 36C.

Gasoline, Diesel, and Blends.

Part 1. General Provisions.

§ 105-449.60. Definitions.

The following definitions apply in this Article:

- (1) Blended fuel. — A mixture composed of gasoline or diesel fuel and another liquid, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a fuel in a highway vehicle.
- (2) Blender. — A person who produces blended fuel outside the terminal transfer system.
- (3) Bulk-end user. — A person who maintains storage facilities for motor fuel and uses part or all of the stored fuel to operate a highway vehicle.

- (4) Bulk plant. — A motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.
- (5) Code. — Defined in G.S. 105-228.90.
- (6) Destination state. — The state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container, or a type of transportation equipment for the purpose of resale or use.
- (7) Diesel fuel. — Any liquid, other than gasoline, that is suitable for use as a fuel in a diesel-powered highway vehicle. The term does not include jet fuel sold to a buyer who is certified to purchase jet fuel under the Code.
- (8) Distributor. — A person who acquires motor fuel from a supplier or from another distributor for subsequent sale.
- (9) Dyed diesel fuel. — Diesel fuel that meets the dyeing and marking requirements of § 4082 of the Code.
- (10) Elective supplier. — A supplier that is required to be licensed in this State and that elects to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.
- (11) Export. — To obtain motor fuel in this State for sale or other distribution in another state. In applying this definition, motor fuel delivered out-of-state by or for the seller constitutes an export by the seller and motor fuel delivered out-of-state by or for the purchaser constitutes an export by the purchaser.
- (12) Fuel alcohol. — Methanol or fuel grade ethanol.
- (13) Fuel alcohol provider. — A person who does any of the following:
 - a. Produces fuel alcohol.
 - b. Imports fuel alcohol outside the terminal transfer system by means of a marine vessel, a transport truck, or a railroad tank car.
- (14) Gasohol. — A blended fuel composed of gasoline and fuel grade ethanol.
- (15) Gasoline. — Any of the following:
 - a. All products that are commonly or commercially known or sold as gasoline and are suitable for use as a fuel in a highway vehicle, other than products that have an American Society for Testing Materials octane number of less than 75 as determined by the motor method.
 - b. A petroleum product component of gasoline, such as naptha, reformat, or toluene.
 - c. Gasohol.
 - d. Fuel grade ethanol.The term does not include aviation gasoline sold for use in an aircraft motor. "Aviation gasoline" is gasoline that is designed for use in an aircraft motor and is not adapted for use in an ordinary highway vehicle.
- (16) Gross gallons. — The total amount of motor fuel measured in gallons, exclusive of any temperature, pressure, or other adjustments.
- (17) Highway. — Defined in G.S. 20-4.01(13).
- (18) Highway vehicle. — A self-propelled vehicle that is designed for use on a highway.

- (19) Import. — To bring motor fuel into this State by any means of conveyance other than in the fuel supply tank of a highway vehicle. In applying this definition, motor fuel delivered into this State from out-of-state by or for the seller constitutes an import by the seller, and motor fuel delivered into this State from out-of-state by or for the purchaser constitutes an import by the purchaser.
- (19a) In-State-only supplier. — Either of the following:
- a. A supplier that is required to have a license and elects not to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state.
 - b. A supplier that does business only in this State.
- (20) Motor fuel. — Gasoline, diesel fuel, and blended fuel.
- (21) Motor fuel rate. — The rate of tax set in G.S. 105-449.80.
- (22) Motor fuel transporter. — A person who transports motor fuel outside the terminal transfer system by means of a transport truck, a railroad tank car, or a marine vessel.
- (23) Net gallons. — The amount of motor fuel measured in gallons when corrected to a temperature of 60 degrees Fahrenheit and a pressure of 14 $\frac{7}{10}$ pounds per square inch.
- (24) Permissive supplier. — An out-of-state supplier that elects, but is not required, to have a supplier's license under this Article.
- (25) Person. — Defined in G.S. 105-228.90.
- (26) Position holder. — The person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for fuel at the terminal. The term includes a terminal operator who owns fuel in the terminal.
- (27) Rack. — A mechanism for delivering motor fuel from a refinery, a terminal, or a bulk plant into a transport truck, a railroad tank car, or another means of transfer that is outside the terminal transfer system.
- (28) Removal. — A physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport truck or another means of conveyance outside the terminal transfer system is complete upon delivery into the means of conveyance.
- (29) Retailer. — A person who maintains storage facilities for motor fuel and who sells the fuel at retail or dispenses the fuel at a retail location.
- (30) Secretary. — Defined in G.S. 105-228.90.
- (31) Supplier. — Any of the following:
- a. A position holder or a person who receives motor fuel pursuant to a two-party exchange.
 - b. A fuel alcohol provider.
- (32) System transfer. — Either of the following:
- a. A transfer of motor fuel within the terminal transfer system.
 - b. A transfer, by transport truck or railroad tank car, of fuel grade ethanol.

- (33) Tank wagon. — A truck that is not a transport truck and has multiple compartments designed or used to carry motor fuel.
- (33a) Tax. — An inspection or other excise tax on motor fuel and any other fee or charge imposed on motor fuel on a per-gallon basis.
- (34) Terminal. — A motor fuel storage and distribution facility that has been assigned a terminal control number by the Internal Revenue Service, is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.
- (35) Terminal operator. — A person who owns, operates, or otherwise controls a terminal.
- (36) Terminal transfer system. — The motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. The term has the same meaning as “bulk transfer/terminal system” under 26 C.F.R. § 48.4081-1.
- (37) Transmix. — Either of the following:
 - a. The buffer or interface between two different products in a pipeline shipment.
 - b. A mix of two different products within a refinery or terminal that results in an off-grade mixture.
- (38) Transport truck. — A semitrailer combination rig designed or used to transport loads of motor fuel over a highway.
- (39) Trustee. — A person who is licensed as a supplier, an elective supplier, or a permissive supplier and who receives tax payments from and on behalf of a licensed distributor.
- (40) Two-party exchange. — A transaction in which motor fuel is transferred from one licensed supplier to another licensed supplier pursuant to an exchange agreement whereby the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier’s customer at the rack of the terminal at which the delivering supplier is the position holder. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 1, 2.)

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 647, ss. 1 and 2, effective July 1, 1996, added subdivisions (19a) and (33a).

Part 2. Licensing.

§ 105-449.65. List of persons who must have a license.

(a) License. — A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

- (1) A refiner.
- (2) A supplier.
- (3) A terminal operator.
- (4) An importer.
- (5) Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 3, effective July 1, 1996.
- (6) A blender.
- (7) A motor fuel transporter.
- (8) A bulk-end user of undyed diesel fuel.

(9) A retailer of undyed diesel fuel.

(b) Multiple Activity. — A person who is engaged in more than one activity for which a license is required must have a separate license for each activity, unless this subsection provides otherwise. A person who is licensed as a supplier is not required to obtain a separate license for any other activity for which a license is required and is considered to have a license as a distributor. A person who is licensed as an occasional importer or a tank wagon importer is not required to obtain a separate license as a distributor. A person who is licensed as a distributor is not required to obtain a separate license as an importer if the distributor acquires fuel for import only from an elective supplier or a permissive supplier. A person who is licensed as a distributor or a blender is not required to obtain a separate license as a motor fuel transporter if the distributor or blender does not transport motor fuel for others for hire. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 3.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, deleted subdivision (a)(5) which read “An exporter, if the Secretary

imposes this requirement by rule”, and added the third and fourth sentences in subsection (b).

§ 105-449.66. Types of importers; restrictions on who can get a license as an importer.

(a) Types. — An applicant for a license as an importer must indicate the type of importer license sought. The types of importers are as follows:

- (1) Bonded importer. — A bonded importer is a person, other than a supplier, who imports, by transport truck or another means of transfer outside the terminal transfer system, motor fuel removed from a terminal located in another state in any of the following circumstances:
 - a. The state from which the fuel is imported does not require the seller of the fuel to collect motor fuel tax on the removal either at that state’s rate or the rate of the destination state.
 - b. The supplier of the fuel is not an elective supplier.
 - c. The supplier of the fuel is not a permissive supplier.
- (2) Occasional importer. — An occasional importer is any of the following that imports motor fuel by any means outside the terminal transfer system:
 - a. A distributor that imports motor fuel on an average basis of no more than once a month during a calendar year.
 - b. A bulk-end user that is not a distributor.
 - c. A distributor that imports motor fuel for use in a race car.
- (3) Tank wagon importer. — A tank wagon importer is a person who imports, only by means of a tank wagon, motor fuel that is removed from a terminal or a bulk plant located in another state.

(b) Restrictions. — A person may not be licensed as more than one type of importer. A person who is a bulk-end user and is not also a distributor may not be licensed as a bonded importer. A person who is a bulk-end user and is not also a distributor may be licensed as an

occasional importer with the restriction that the person acquire motor fuel for import only from an elective supplier or a permissive supplier or from a bulk plant. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 4.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, in subdivision (a)(2), substituted “any of the following that” for “a

person who”, added subdivisions (a)(2)a., (a)(2)b., and (a)(2)c., and made a related change.

§ 105-449.67. List of persons who may obtain a license.

(a) License. — A person who is engaged in business as any of the following may obtain a license issued by the Secretary for that business:

- (1) A distributor.
- (2) A permissive supplier.
- (3) An exporter.

(b) Effect on Exports. — An exporter license or a distributor license authorizes the license holder to pay the destination state tax on motor fuel purchased for export instead of paying this State’s tax on the fuel. An unlicensed exporter or unlicensed distributor must pay this State’s tax on motor fuel purchased for export.

(c) Multiple Activity. — A person who is licensed as a distributor is considered to have a license as an exporter. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 5.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, added the subsection des-

ignation (a), in subsection (a) added “License”, and added subdivision (a)(3); and added subsections (b) and (c).

§ 105-449.69. How to apply for a license.

(a) General. — To obtain a license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant’s name, address, federal employer identification number, and any other information required by the Secretary.

(b) Most Licenses. — An applicant for a license as a refiner, a supplier, a terminal operator, an importer, a blender, a bulk-end user of undyed diesel fuel, a retailer of undyed diesel fuel, or a distributor must meet the following requirements:

- (1) If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State.
- (2) If the applicant is a limited liability company, the applicant must either be organized in this State or be authorized to transact business in this State.
- (3) If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State.
- (4) If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent’s name and address.

(c) Federal Certificate. — An applicant for a license as a refiner, a supplier, a terminal operator, a blender, or a permissive supplier

must have a federal Certificate of Registry that is issued under § 4101 of the Code and authorizes the applicant to enter into federal tax-free transactions in taxable motor fuel in the terminal transfer system. An applicant that is required to have a federal Certificate of Registry must include the registration number of the certificate on the application for a license under this section.

An applicant for a license as an importer, an exporter, or a distributor that has a federal Certificate of Registry issued under § 4101 of the Code must include the registration number of the certificate on the application for a license under this section.

(d) **Import Activity.** — An applicant for a license as an importer or as a distributor must list on the application each state from which the applicant intends to import motor fuel and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant must give the applicant's license or registration number in that state.

A license holder that intends to import motor fuel from a state not listed on the license holder's application for an importer's license or a distributor's license must give the Secretary written notice of the change before importing motor fuel from that state. The notice must include the information that is required on the license application.

(e) **Export Activity.** — An applicant for a license as an exporter must designate an agent located in North Carolina for service of process and must give the agent's name and address. An applicant for a license as an exporter or as a distributor must list on the application each state to which the applicant intends to export motor fuel received in this State by means of a transfer that is outside the terminal transfer system and, if required by a state listed, must be licensed or registered for motor fuel tax purposes in that state. If a state listed requires the applicant to be licensed or registered, the applicant must give the applicant's license or registration number in that state.

A license holder that intends to export motor fuel to a state not listed on the license holder's application for an exporter's license or a distributor's license must give the Secretary written notice of the change before exporting motor fuel to that state. The notice must include the information that is required on the license application. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 6.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, in the second paragraph of subsection (c) inserted "an exporter" following "license as an importer"; in subsection (d), deleted "and Export" from the subcatchline, added "or as a distributor" following "license as an importer", added the last sentence of the first paragraph,

and added the second paragraph; added the subsection designation (e), and in subsection (e) added the subcatchline and the first sentence, inserted "an exporter or as" following "An applicant for a license as" in the second sentence, added the last sentence of the first paragraph, and added the second paragraph.

§ 105-449.70. Supplier election to collect tax on out-of-state removals.

(a) **Election.** — An applicant for a license as a supplier may elect on the application to collect the excise tax due this State on motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state. The Secretary must

provide for this election on the application form. A supplier that makes the election allowed by this section is an elective supplier. A supplier that does not make the election allowed by this section is an in-State-only supplier.

A supplier that does not make the election on the application for a supplier's license may make the election later by completing an election form provided by the Secretary. A supplier that does not make the election may not act as an elective supplier for motor fuel that is removed at a terminal in another state and has this State as its destination state.

(b) **Effect.** — A supplier that makes the election allowed by this section agrees to all of the following with respect to motor fuel that is removed by the supplier at a terminal located in another state and has this State as its destination state:

- (1) To collect the excise tax due this State on the fuel and to waive any defense that the State lacks jurisdiction to require the supplier to collect the excise tax due this State under this Article on the fuel.
- (2) To report and pay the tax due on the fuel in the same manner as if the removal had occurred at a terminal located in this State.
- (3) To keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal had occurred at a terminal located in this State.
- (4) To report removals of fuel received by a person who is not licensed in the state where the removal occurred.

(c) **Limited Jurisdiction.** — A supplier that makes the election allowed by this section acknowledges that the State imposes the requirements listed in subsection (b) of this section on the supplier under its general police power set out in Article 3 of Chapter 119 of the General Statutes to regulate the quality of motor fuel and thereby promote public health and safety. A supplier that makes the election allowed by this section submits to the jurisdiction of the State only for the administration of this Article. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 7, 8.)

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 647, ss. 7 and 8, effective July 1, 1996, added the last sentence of subsection (a), and added subdivision (b)(4).

§ 105-449.71. Permissive supplier election to collect tax on out-of-state removals.

(a) **Election.** — An out-of-state supplier that is not required to have a license under this Part may elect to have a license and thereby become a permissive supplier. An out-of-state supplier that does not make this election may not act as a permissive supplier for motor fuel that is removed at a terminal in another state and has this State as its destination state.

(b) **Effect.** — By obtaining a license as a permissive supplier, the permissive supplier agrees to be subject to the same requirements as a supplier and to all of the following with respect to motor fuel that is removed by the permissive supplier at a terminal located in another state and has this State as its destination state:

- (1) To collect the excise tax due this State on the fuel and to waive any defense that the State lacks jurisdiction to

require the supplier to collect the excise tax due this State under this Article on the fuel.

- (2) To report and pay the tax due on the fuel in the same manner as if the removal had occurred at a terminal located in this State.
- (3) To keep records of the removal of the fuel and submit to audits concerning the fuel as if the removal had occurred at a terminal located in this State.
- (4) To report removals of fuel received by a person who is not licensed in the state where the removal occurred.

(c) **Limited Jurisdiction.** — A supplier that makes the election allowed by this section acknowledges that the State imposes the requirements listed in subsection (b) of this section on the supplier under its general police power set out in Article 3 of Chapter 119 of the General Statutes to regulate the quality of motor fuel and thereby promote public health and safety. A supplier that makes the election allowed by this section submits to the jurisdiction of the State only for the administration of this Article. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 9.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, added subdivision (b)(4).

§ 105-449.72. Bond or letter of credit required as a condition of obtaining and keeping certain licenses.

(a) **Initial Bond.** — An applicant for a license as a refiner, a terminal operator, a supplier, an importer, an exporter, a blender, a permissive supplier, or a distributor must file with the Secretary a bond or an irrevocable letter of credit. A bond must be conditioned upon compliance with the requirements of this Article, be payable to the State, and be in the form required by the Secretary. The amount of the bond or irrevocable letter of credit is determined as follows:

- (1) For an applicant for a license as any of the following, the amount is two million dollars (\$2,000,000):
 - a. A refiner.
 - b. A terminal operator.
 - c. A supplier that is a position holder or a person that receives motor fuel pursuant to a two-party exchange.
 - d. A bonded importer.
 - e. A permissive supplier.
- (2) For an applicant for a license as any of the following, the amount is two times the applicant's average expected monthly tax liability under this Article, as determined by the Secretary. The amount may not be less than two thousand dollars (\$2,000) and may not be more than two hundred fifty thousand dollars (\$250,000):
 - a. A supplier that is a fuel alcohol provider but is neither a position holder nor a person that receives motor fuel pursuant to a two-party exchange.
 - b. An occasional importer.
 - c. A tank wagon importer.
 - d. A distributor.
 - e. An exporter.

- (3) For an applicant for a license as a blender, a bond is required only if the applicant's average expected annual tax liability under this Article, as determined by the Secretary, is at least two thousand dollars (\$2,000). When a bond is required, the bond amount is the same as under subdivision (2) of this subsection.

(a1) Multiple Activity. — An applicant for a license as a distributor and as a bonded importer must file only the bond required of a bonded importer. An applicant for two or more of the licenses listed in subdivision (a)(2) or (a)(3) of this section may file one bond that covers the combined liabilities of the applicant under all the activities. A bond for these combined activities may not exceed the maximum amount set in subdivision (a)(2) of this subsection.

(b) Adjustment to Bond. — When notified to do so by the Secretary, a person that has filed a bond or an irrevocable letter of credit and that holds a license listed in subdivision (a)(2) of this section must file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The person must file the additional bond or irrevocable letter of credit within 30 days after receiving the notice from the Secretary. The amount of the initial bond or irrevocable letter of credit and any additional bond or irrevocable letter of credit filed by the license holder, however, may not exceed the limits set in subdivision (a)(2) of this section. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 10.)

Editor's Note. — The subsection designation (a1) was assigned by the Revisor of Statutes, the designation in Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 10, having been (b).

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, in subsection (a), inserted "an exporter, a blender" following "an

importer" in the first sentence, added the second sentence, substituted "neither a position holder nor" for "not a position holder or" in subdivision (a)(2)a., added subdivisions (a)(2)e., and (a)(3); redesignated the former last paragraph of subsection (a) as present subsection (a1) and rewrote the subsection.

§ 105-449.73. Reasons why the Secretary can deny an application for a license.

The Secretary may refuse to issue a license to an individual applicant that has done any of the following and may refuse to issue a license to an applicant that is a business entity if any principal in the business has done any of the following:

- (1) Had a license or registration issued under this Article or former Article 36 or 36A of this Chapter cancelled by the Secretary for cause.
- (1a) Had a motor fuel license or registration issued by another state cancelled for cause.
- (2) Had a federal Certificate of Registry issued under § 4101 of the Code, or a similar federal authorization, revoked.
- (3) Been convicted of fraud or misrepresentation.
- (4) Been convicted of any other offense that indicates that the applicant may not comply with this Article if issued a license. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 11.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective

July 1, 1996, added subdivision (1a).

Editor's Note. — The subsection des-

ignation (1a) was assigned by the Revisor of Statutes, the designation in Session Laws 1995 (Reg. Sess., 1996), c. 647,

s. 11, having been (2). The remaining subsections designations are unchanged.

§ 105-449.77. Records and lists of license applicants and license holders.

(a) Records. — The Secretary must keep a record of the following:

(1) Applicants for a license under this Article.

(2) Persons to whom a license has been issued under this Article.

(3) Persons that hold a current license issued under this Article, by license category.

(b) Supplier Lists. — The Secretary must give a list of licensed suppliers, licensed terminal operators, licensed importers, licensed distributors, and licensed exporters to each licensed supplier. The list must state the name, account number, and business address of each license holder on the list. The Secretary must send a monthly update of the list to each licensed supplier.

The Secretary must give a list of licensed suppliers to each licensed distributor, licensed exporter, and licensed importer. The Secretary must also give a list of licensed suppliers to each unlicensed distributor or unlicensed exporter that asks for a copy of the list. The list must state the name, account number, and business address of each supplier on the list and must indicate whether the supplier is an elective supplier, a permissive supplier, or an in-State-only supplier. The Secretary must send an annual update of the list to each licensed distributor, licensed exporter, and licensed importer, and to each unlicensed distributor or unlicensed exporter that requested a copy of the list.

(c) Transporter Lists. — The Secretary must give a list of licensed motor fuel transporters to each licensed supplier, licensed terminal operator, licensed importer, licensed blender, licensed distributor, and licensed exporter. The list must state the name, account number, and business address of each motor fuel transporter on the list. The Secretary must send a monthly update of the list to each license holder to whom the Secretary must give the list.

The Secretary must give a list of licensed suppliers, licensed terminal operators, licensed importers, licensed blenders, licensed distributors, and licensed exporters to each licensed motor fuel transporter. The list must state the name, account number, and business address of each license holder on the list. The Secretary must send a monthly update of the list to each licensed motor fuel transporter. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 12.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, in subsection (b), substituted "Supplier Lists" for "Distributor List", rewrote the first paragraph, and

added the second paragraph; deleted former subsection (c) regarding a supplier list, and added present subsection (c).

Part 3. Tax and Liability.

§ 105-449.81. Excise tax on motor fuel.

An excise tax at the motor fuel rate is imposed on motor fuel that is:

- (1) Removed from a refinery or a terminal and, upon removal, is subject to the federal excise tax imposed by § 4081 of the Code.
- (2) Imported by a system transfer to a refinery or a terminal and, upon importation, is subject to the federal excise tax imposed by § 4081 of the Code.
- (3) Imported by a means of transfer outside the terminal transfer system for sale, use, or storage in this State and would have been subject to the federal excise tax imposed by § 4081 of the Code if it had been removed at a terminal or bulk plant rack in this State instead of imported.
- (3a) Fuel grade ethanol that meets any of the following descriptions:
 - a. Is removed from a terminal or another storage and distribution facility, unless the removed fuel is received by a supplier for subsequent sale.
 - b. Is imported to this State outside the terminal transfer system by a means other than a marine vessel, a transport truck, or a railroad tank car.
- (4) Blended fuel made in this State or imported to this State.
- (5) Transferred within the terminal transfer system and, upon transfer, is subject to the federal excise tax imposed by section 4081 of the Code. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 13.)

Editor's Note. — The subdivision designation (3a) was assigned by the Revisor of Statutes, the designation in Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 13, having been (4). The subdivi-

sion designation (4) remains unchanged.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, added subdivisions (3a) and (5).

§ 105-449.82. Liability for tax on removals from a refinery or terminal.

(a) Refinery Removal. — The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed from a refinery in this State is payable by the refiner.

(b) Terminal System Removal. — The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed by a system transfer from a terminal in this State is payable by the position holder for the fuel. If the position holder is not the terminal operator, the terminal operator is jointly and severally liable for the tax.

(c) Terminal Rack Removal. — The excise tax imposed by G.S. 105-449.81(1) on motor fuel removed at a terminal rack in this State is payable by the person that first receives the fuel upon its removal from the terminal. If the motor fuel is removed by an unlicensed distributor, the supplier of the fuel is jointly and severally liable for the tax due on the fuel. If the motor fuel is sold by a person who is not licensed as a supplier, as required by this Article, the terminal operator, the person selling the fuel, and the person removing the

fuel are jointly and severally liable for the tax due on the fuel. If the motor fuel removed is not dyed diesel fuel but the shipping document issued for the fuel states that the fuel is dyed diesel fuel, the terminal operator, the supplier, and the person removing the fuel are jointly and severally liable for the tax due on the fuel. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 14.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective

July 1, 1996, added the next to last sentence of subsection (c).

§ 105-449.83A. Liability for tax on fuel grade ethanol.

The excise tax imposed by G.S. 105-449.81(3a) on fuel grade ethanol removed from a storage facility is payable by the fuel alcohol provider. The excise tax imposed by that subdivision on fuel grade ethanol imported to this State is payable by the importer. (1995 (Reg. Sess., 1996), c. 647, s. 15.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 57, made this section effective July 1, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 647 enacted this section and amended G.S. 105-449.81. As subsections in G.S.

105-449.81 were redesignated at the direction of the Revisor of Statutes the reference in this section has been changed to be consistent with those changes.

§ 105-449.84. Liability for tax on blended fuel.

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 16, changed the references to G.S. 105-449.89(4) to G.S. 105-449.89(5) to be consistent with amendments made to that section; how-

ever, as those subsections were redesignated at the direction of the Revisor of Statutes no changes have been made to this section.

§ 105-449.84A. Liability for tax on behind-the-rack transfers.

The excise tax imposed by G.S. 105-449.81(5) on motor fuel transferred within the terminal transfer system is payable by the supplier of the fuel, the person receiving the fuel, and the terminal operator of the terminal at which the fuel was transferred, all of whom are jointly and severally liable for the tax. (1995 (Reg. Sess., 1996), c. 647, s. 17.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 57, made this section effective July 1, 1996.

Session Laws 1995 (Reg. Sess., 1996), c. 647 enacted this section and amended G.S. 105-449.81. As subsections in G.S.

105-449.81 were redesignated at the direction of the Revisor of Statutes the reference in this section has been changed to be consistent with those changes.

§ 105-449.85. Compensating tax on and liability for unaccounted for motor fuel losses at a terminal.

(a) Tax. — An excise tax at the motor fuel rate is imposed annually on unaccounted for motor fuel losses at a terminal that exceed one-half of one percent (0.5%) of the number of net gallons removed from the terminal during the year by a system transfer or at a terminal rack. To determine if this tax applies, the terminal operator of the terminal must determine the difference between the following:

- (1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year.
- (2) The amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year.

(b) Liability. — The terminal operator whose motor fuel is unaccounted for is liable for the tax imposed by this section and is liable for a penalty equal to the amount of tax payable. Motor fuel received by a terminal operator and not shown on an informational return filed by the terminal operator with the Secretary as having been removed from the terminal is presumed to be unaccounted for. A terminal operator may establish that motor fuel received at a terminal but not shown on an informational return as having been removed from the terminal was lost or part of a transmix and is therefore not unaccounted for. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 18.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, in subsection (b), in the first sentence, inserted “and is liable for a penalty equal to the amount of tax pay-

able” following “tax imposed by this section”, and substituted “an informational return” for “a report” in the second and third sentences.

§ 105-449.87. Backup tax and liability for the tax.

(a) Tax. — An excise tax at the motor fuel rate is imposed on the following:

- (1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code.
- (2) Motor fuel that was allowed an exemption from the motor fuel tax and was then used for a taxable purpose.
- (3) Motor fuel that is used to operate a highway vehicle after an application for a refund of tax paid on the motor fuel is made or allowed under G.S. 105-449.107(a) on the basis that the motor fuel was used for an off-highway purpose.
- (4) Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 19, effective July 1, 1996.

(b) Liability. — The operator of a highway vehicle that uses motor fuel that is taxable under this section is liable for the tax. If the highway vehicle that uses the fuel is owned by or leased to a motor carrier, the motor carrier is jointly and severally liable for the tax. If the end seller of motor fuel taxable under this section knew or had reason to know that the motor fuel would be used for a purpose that

is taxable under this section, the end seller is jointly and severally liable for the tax.

(c) Imputed Knowledge. — An end seller of dyed diesel fuel is considered to have known or had reason to know that the fuel would be used for a purpose that is taxable under this section unless the end seller delivered the fuel into a storage facility that meets one of the following requirements:

- (1) It contains fuel used only in heating, drying crops, or a manufacturing process and is installed in a manner that makes use of the fuel for any other purpose improbable.
- (2) It is marked as follows with the phrase “Dyed Diesel”, “For Nonhighway Use”, or a similar phrase that clearly indicates the fuel is not to be used to operate a highway vehicle:
 - a. The storage tank of the storage facility is marked if the storage tank is visible.
 - b. The fillcap or spill containment box of the storage facility is marked.
 - c. The dispensing device that serves the storage facility is marked. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 19.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, repealed subdivision (a)(4) regarding an excise tax on dyed diesel fuel and motor fuel.

§ 105-449.88. (Effective until July 1, 1997) Exemptions from the excise tax.

The excise tax on motor fuel does not apply to the following:

- (1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state. If the removed fuel is to be used for a purpose that is exempt from tax in the destination state and, when removing the fuel, the licensed distributor or licensed exporter uses an access card or code specified by the supplier to notify the supplier that the fuel will be resold in an exempt sale, no tax is due on the removal.
- (2) Motor fuel sold to the federal government.
- (3) Motor fuel sold to the State for its use.
- (4) Motor fuel sold to a local board of education for use in the public school system. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 20.)

Section Set Out Twice. — The section above is effective until July 1, 1997. For the section as amended effective July 1, 1997, see the following section, also numbered § 105-449.88.

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 647, s.

20, effective July 1, 1996, in subdivision (1), deleted “that is printed on the shipping document for the motor fuel” following “motor fuel's destination state” in the first sentence, and added the second sentence.

§ 105-449.88. (Effective July 1, 1997) Exemptions from the excise tax.

The excise tax on motor fuel does not apply to the following:

- (1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state.
- (2) Motor fuel sold to the federal government.
- (3) Motor fuel sold to the State for its use.
- (4) Motor fuel sold to a local board of education for use in the public school system. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 20, 21.)

Section Set Out Twice. — The section above is effective July 1, 1997. For the section as in effect until July 1, 1997, see the preceding section, also numbered § 105-449.88.

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 21, effective July 1, 1997, deleted the second sentence of subdivision (1), which

read: "If the removed fuel is to be used for a purpose that is exempt from tax in the destination state and, when removing the fuel, the licensed distributor or licensed exporter uses an access card or code specified by the supplier to notify the supplier that the fuel will be resold in an exempt sale, no tax is due on the removal."

§ 105-449.89. Removals by out-of-state bulk-end user.

An out-of-state bulk-end user may remove motor fuel from a terminal in this State for use in the state in which the bulk-end user is located as follows:

- (1) Upon payment to the supplier of tax on the motor fuel at the motor fuel rate.
- (2) Upon payment to the supplier of destination, state tax on the motor fuel, if the bulk-end user acquires the fuel from a supplier who, with respect to the destination state of the fuel, is either a permissive supplier or an elective supplier and therefore collects the destination state tax on the fuel. (1995 (Reg. Sess., 1996), c. 647, s. 22.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 57, made this section effective July 1, 1996.

Part 4. Payment and Reporting.

§ 105-449.90. When tax return and payment are due.

(a) **Filing Periods.** — The excise tax imposed by this Article is payable when a return is due. A return is due annually, quarterly, or monthly, as specified in this section. A return must be filed with the Secretary and be in the form required by the Secretary.

An annual return is due within 45 days after the end of each calendar year. An annual return covers tax liabilities that accrue in the calendar year preceding the date the return is due.

A quarterly return is due by the last day of the month that follows the end of a calendar quarter. A quarterly return covers tax liabilities that accrue in the calendar quarter preceding the date the return is due.

A monthly return of a person other than an occasional importer is due within 22 days after the end of each month. A monthly return of an occasional importer is due by the 1st of each month. A monthly return covers tax liabilities that accrue in the calendar month preceding the date the return is due.

(b) Annual Filers. — A terminal operator must file an annual return for the compensating tax imposed by G.S. 105-449.85.

(c) Quarterly Filers. — A licensed importer that removes fuel at a terminal rack of a permissive or an elective supplier and a licensed distributor must file a quarterly return under G.S. 105-449.94 to reconcile exempt sales.

(d) Monthly Filers on 22nd. — The following persons must file a monthly return by the 22nd of each month:

- (1) A refiner.
- (2) A supplier.
- (3) A bonded importer.
- (4) A blender.
- (5) A tank wagon importer.
- (6) A person that incurred a liability under G.S. 105-449.86 during the preceding month for the tax on dyed diesel fuel used to operate certain highway vehicles.
- (7) A person that incurred a liability under G.S. 105-449.87 during the preceding month for the backup tax on motor fuel.

(e) Monthly Filers on 1st. — An occasional importer must file a monthly return by the 1st of each month. An occasional importer is not required to file a return, however, if all the motor fuel imported by the importer in a reporting period was removed at a terminal located in another state and the supplier of the fuel is an elective supplier or a permissive supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 23.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, in subsection (c), inserted “licensed importer that removes fuel at a terminal rack of a permissive or an elec-

tive supplier and a” preceding “licensed distributor must file”; and in subdivisions (d)(6) and (d)(7), substituted “incurred a liability” for “is liable” and inserted “during the preceding month”.

§ 105-449.90A. Payment by supplier of destination state tax collected on exported motor fuel.

Tax collected by a supplier on exported motor fuel is payable by the supplier to the destination state if the supplier is licensed in that state for payment of motor fuel excise taxes. Tax collected by a supplier on exported motor fuel is payable to the Secretary for remittance to the destination state if the supplier is not licensed in that state for payment of motor fuel excise taxes. Payments of destination state tax are due to the destination state or the Secretary, as appropriate, on the date set by the law of the destination state. Payments of destination state tax to the Secretary must be accompanied by a form provided by the Secretary that contains the

information required by the Secretary. (1995 (Reg. Sess., 1996), c. 647, s. 24.)

Editor's Note. — Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 57, made this section effective July 1, 1996.

§ 105-449.91. Remittance of tax to supplier.

(a) Distributor. — A distributor must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed distributor has the right to defer the remittance of tax to the supplier, as trustee, until the date the trustee must pay the tax to this State or to another state. The time when an unlicensed distributor must remit tax to a supplier is governed by the terms of the contract between the supplier and the unlicensed distributor.

(b) Exporter. — An exporter must remit tax due on motor fuel removed at a terminal rack to the supplier of the fuel. A licensed exporter that is also licensed in the destination state has the right to defer the remittance of tax to the supplier until the date set by the law of the destination state of the fuel. The time when an unlicensed exporter, or a licensed exporter that is not also licensed in the destination state, must remit tax to a supplier is governed by the terms of the contract between the supplier and the exporter.

(c) Importer. — A licensed importer must remit tax due on motor fuel removed at a terminal rack of a permissive or an elective supplier to the supplier of the fuel. A licensed importer that removes fuel from a terminal rack of a permissive or an elective supplier has the right to defer the remittance of tax to the supplier until the date the supplier must pay the tax to this State.

(d) General. — The method by which a distributor, an exporter, or a licensed importer must remit tax to a supplier is governed by the terms of the contract between the supplier and the distributor, exporter, or licensed importer and the supplier. G.S. 105-449.76 governs the cancellation of a license of a distributor, an exporter, and an importer. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 25.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted “to supplier” for “by distributor” in the catchline, added

the subsection designation (a), added the subcatchline “Distributor”, rewrote the former section as subsection (a), and added subsections (b), (c), and (d).

§ 105-449.92. Notice to suppliers of cancellation or reissuance of certain licenses; effect of notice.

(a) Notice to Suppliers. — If the Secretary cancels a distributor's license, an exporter's license, or an importer's license, the Secretary must notify all suppliers of the cancellation. If the Secretary issues a license to a distributor, an exporter, or an importer whose license was cancelled, the Secretary must notify all suppliers of the issuance.

(b) Effect of Notice. — A supplier that sells motor fuel to a distributor or an exporter after receiving notice from the Secretary that the Secretary has cancelled the distributor's or exporter's license is jointly and severally liable with the distributor or exporter

for any tax due on motor fuel the supplier sells to the distributor or exporter after receiving the notice. This joint and several liability does not apply to excise tax due on motor fuel sold to a previously unlicensed distributor or unlicensed exporter after the supplier receives notice from the Secretary that the Secretary has issued another license to the distributor or exporter. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 26.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted “certain licenses” for “a distributor’s license” in the catchline; in subsection (a), in the first sentence, inserted “an exporter’s license, or an importer’s license” following “cancels a distributor’s license”, and in the last sentence, inserted “an exporter or an importer” following “license to a distributor”; in subsection (b), in the first sen-

tence, inserted “or an exporter” following “motor fuel to a distributor”, inserted “or exporter’s” following “cancelled the distributor’s”, inserted “or exporter” following “liable with the distributor” and following “sells to the distributor”, and in the last sentence, inserted “or unlicensed exporter” following “previously unlicensed distributor”, and inserted “or exporter” following “another license to the distributor.”

§ 105-449.93. Exempt sale deduction and percentage discount for licensed distributors and some licensed importers.

(a) Deduction. — A license holder listed below may deduct from the amount of tax otherwise payable to a supplier the amount calculated on motor fuel the license holder received from the supplier and resold to a governmental unit whose purchases of motor fuel are exempt from the tax under G.S. 105-449.88 if, when removing the fuel, the license holder used an access card or code specified by the supplier to notify the supplier of the license holder’s intent to resell the fuel in an exempt sale:

- (1) A licensed distributor.
- (2) A licensed importer that removed the motor fuel from a terminal rack of a permissive or an elective supplier.

(b) Percentage Discount. — A licensed distributor that pays the tax due a supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of one percent (1%) of the amount of tax payable. A licensed importer that removes motor fuel from a terminal rack of a permissive or an elective supplier and that pays the tax due the supplier by the date the supplier must pay the tax to the State may deduct from the amount due a discount of the same amount allowed a licensed distributor. The discount covers the expense of furnishing a bond and losses due to shrinkage or evaporation. A supplier may not directly or indirectly deny this discount to a licensed distributor or licensed importer that pays the tax due the supplier by the date the supplier must pay the tax to the State. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 27.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, added “and some licensed importers” in the catchline; in subsection (a), substituted “A license holder listed below” for “A licensed distributor”, twice substituted “license holder” for “distrib-

utor”, substituted “license holder’s” for “distributor’s”, added subdivisions (a)(1) and (a)(2), and made a related change; in subsection (b), deleted “excise” following “A licensed distributor that pays the” in the first sentence, added the second sentence, and in the last sentence, inserted

“or licensed importer” following “discount to a licensed distributor”, and deleted “excise” following “licensed importer that pays the.”

§ 105-449.94. Quarterly reconciling return for exempt sales by licensed distributor and some licensed importers.

(a) Return. — A licensed distributor or a licensed importer that deducts exempt sales under G.S. 105-449.93(a) when paying tax to a supplier must file a quarterly reconciling return for the exempt sales. The return must list the following information:

- (1) The number of gallons for which a deduction was taken during the quarter, by supplier.
- (2) The number of gallons sold in exempt sales during the quarter, by type of sale, and the purchasers of the fuel in the exempt sales.

(b) Payment. — If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a quarter exceeds the number of exempt gallons sold, the licensed distributor or licensed importer must pay tax on the difference at the motor fuel rate. The licensed distributor or licensed importer is not allowed a percentage discount when paying tax under this subsection.

(c) Refund. — If the number of gallons for which a licensed distributor or licensed importer takes a deduction during a quarter is less than the number of exempt gallons sold, the Secretary must refund the amount of tax paid on the difference. The Secretary must reduce the amount of the refund by the amount of the percentage discount received on the fuel.

(d) Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 28, effective July 1, 1996. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 28.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, added “and some licensed importers” in the catchline; inserted “or a licensed importer” following “A licensed distributor” in subsection (a); inserted “or licensed importer” following “licensed distributor” three times in subsection (b); in subsection (c), in the first sentence, inserted “or licensed importer” following “which a licensed distributor”, and deleted “licensed distributor for the”

following “Secretary must refund the”; and deleted subsection (d) which read “Exception. If the number of gallons for which a licensed distributor takes a deduction during a quarter equals the number of exempt gallons sold, the licensed distributor is not required to file a return under this section for that quarter. The Secretary may waive the requirement of filing a return under this section in other specified circumstances.”

§ 105-449.95. Quarterly hold harmless for licensed distributors and some licensed importers.

(a) Calculation. — At the end of each calendar quarter, the Secretary must review the amount of discounts each licensed distributor licensed importer received under G.S. 105-449.93(b). The Secretary must determine if the amount of discounts the distributor or importer received under that subsection in each month of the quarter is less than the amount the distributor or importer would have received if the distributor or importer had been allowed a discount on taxable gasoline purchased by the distributor or im-

porter from a supplier during each month of the quarter under the following schedule:

<u>Amount of Gasoline Purchased Each Month</u>	<u>Percentage Discount</u>
First 150,000 gallons	2%
Next 100,000 gallons	1 1/2%
Amount over 250,000 gallons	1%.

(b) Refund. — If the amount the licensed distributor or licensed importer received under G.S. 105-449.93(b) for a month in the quarter is less than the amount the distributor or importer would have received on the distributor's or importer's taxable gasoline purchases under the monthly schedule in subsection (a) of this section, the Secretary must send the distributor or importer a refund check for the difference. In determining the amount of discounts a distributor or importer received under G.S. 105-449.93(b) for gasoline purchased in a month, a distributor or importer is considered to have received the amount of any discounts the distributor or importer could have received under that subsection but did not receive because the distributor or importer failed to pay the tax due to the supplier by the date the supplier had to pay the tax to the State. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 29.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, inserted "and some licensed importers" in the catchline; in subsection (a), inserted "licensed importer" following "licensed distributor", and inserted "or importer" following "the distributor"

throughout the subsection; in subsection (b), substituted "If the amount the licensed distributor or licensed importer received" for "If the amount the distributor received", and inserted "or importer" following "distributor" throughout the subsection.

§ 105-449.96. Information required on return filed by supplier.

A return of a supplier must list all of the following information and any other information required by the Secretary:

- (1) The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of fuel, seller, point of origin, destination state, and carrier.
- (2) Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 30, effective July 1, 1996.
- (3) The number of gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of fuel, receiving distributor, exporter, or importer, terminal code, and carrier.
- (4) The number of gallons of motor fuel removed during the month for export, sorted by type of fuel, receiving distributor or exporter, terminal code, destination state, and carrier.
- (5) The number of gallons of motor fuel removed during the month at a terminal located in another state for destination to this State, as indicated on the shipping document for the fuel, sorted by type of fuel, receiving distributor, exporter, or importer, terminal code, and carrier.

- (6) The number of gallons of motor fuel the supplier sold during the month to any of the following, sorted by type of fuel, exempt entity, receiving distributor, terminal code, and carrier:
 - a. A governmental unit whose use of fuel is exempt from the tax.
 - b. A licensed distributor that resold the motor fuel to a governmental unit whose use of fuel is exempt from the tax, as indicated by the distributor.
 - c. A licensed exporter that resold the motor fuel to a person whose use of fuel is exempt from tax in the destination state, as indicated by the exporter.
- (7) The amount of discounts allowed under G.S. 105-449.93(b) on motor fuel sold during the month to licensed distributors or licensed importers. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 30.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted “The number of gallons of tax-paid motor fuel received by the supplier during the month, sorted by type of fuel, seller, point of origin, destination state, and carrier” for “The number of gallons of motor fuel received during the month by the supplier by a system transfer, by type of fuel, and by terminal” in subdivision (1); repealed former subdivision (2) which read “The number of gallons of motor fuel imported during the month by the supplier by means of a transfer outside the terminal transfer system”; substituted “sorted by type of fuel, receiving distributor, exporter, or importer, terminal code, and carrier” for “by type of fuel, by receiving distributor, and by terminal” in subdivision (3); substituted “sorted by type of

fuel, receiving distributor or exporter, terminal code, destination state, and carrier” for “by distributor and by terminal, and, for each removal, the destination state of the fuel” in subdivision (4); in subdivision (5), deleted “by distributor and by terminal” preceding “month at a terminal”, and added “sorted by type of fuel, receiving distributor, exporter, or importer, terminal code, and carrier”; in subdivision (6), substituted “month to any” for “month, by distributor and by terminal to either”, added “sorted by type of fuel, exempt entity, receiving distributor, terminal code, and carrier”, in subdivision (6)b. inserted “licensed”, and substituted “indicated” for “reported”, and added subdivision (6)c.; and in subdivision (7), substituted “distributors or licensed importers” for “distributors, sorted by distributor.”

§ 105-449.97. Deductions and discounts allowed a supplier when filing a return.

(a) **(Effective until July 1, 1997)** Taxes Not Remitted. — When a supplier files a return, the supplier may deduct from the amount of tax payable with the return the amount of tax any of the following license holders owes the supplier but failed to remit to the supplier:

- (1) A licensed distributor.
- (2) A licensed importer that removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier.
- (3) A licensed exporter, if the destination state of the exported motor fuel allows a supplier in that state to deduct from the amount of tax payable with a return the amount of tax an exporter licensed in that state owes the supplier but fails to pay.

A supplier is not liable for tax a license holder listed in this subsection owes the supplier but fails to pay. If a listed license holder pays tax owed to a supplier after the supplier deducts the

amount on a return, the supplier must promptly remit the payment to the Secretary. When a supplier deducts an amount not paid to the supplier by a licensed distributor or licensed exporter on exported motor fuel, the Secretary must notify the appropriate destination state of the failure and cooperate with that state in recovering from the exporter the amount deducted.

(a) **(Effective July 1, 1997) Taxes Not Remitted.** — When a supplier files a return, the supplier may deduct from the amount of tax payable with the return the amount of tax any of the following license holders owes the supplier but failed to remit to the supplier:

- (1) A licensed distributor.
- (2) A licensed importer that removed the motor fuel on which the tax is due from a terminal of an elective or a permissive supplier.
- (3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 647, s. 32, effective July 1, 1997.

A supplier is not liable for tax a license holder listed in this subsection owes the supplier but fails to pay. If a listed license holder pays tax owed to a supplier after the supplier deducts the amount on a return, the supplier must promptly remit the payment to the Secretary.

(b) **Administrative Discount.** — A supplier that files a timely return may deduct from the amount of tax payable with the return an administrative discount of one-tenth of one percent (0.1%) of the amount of tax payable to this State as the trustee, not to exceed eight thousand dollars (\$8,000) a month. The discount covers expenses incurred in collecting taxes on motor fuel.

(c) **Percentage Discount.** — A supplier that sells motor fuel directly to an unlicensed distributor or unlicensed exporter or to the bulk-end user, the retailer, or user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 31, 32.)

Subsection (a) Set Out Twice. — The first version of subsection (a) set out above is effective until July 1, 1997. The second version of subsection (a) set out above is effective July 1, 1997.

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 31, effective July 1, 1996, in subsection (a), in the first paragraph, substituted “any of the following license holders” for “a licensed distributor”, added subdivisions (a)(1), (a)(2), and (a)(3), and made a related change, and in the second paragraph, substituted “license holder listed in this subsection” for “licensed distributor” in the first sentence, in the second sentence substituted “listed license holder” for “licensed distributor”, and deleted “distributor’s” following “must properly remit the”, and added the last sentence;

in subsection (b), inserted “to this State” in the first sentence, and deleted “from distributor” from the end of the second sentence; and in subsection (c), added “an unlicensed distributor or unlicensed exporter or to” and substituted “may” for “can” twice.

Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 32, effective July 1, 1997, deleted subdivision (a)(3) regarding a licensed exporter, and deleted the last sentence of the second paragraph, which read “When a supplier deducts an amount not paid to the supplier by a licensed distributor or licensed exporter on exported motor fuel, the Secretary must notify the appropriate destination state of the failure and cooperate with that state in recovering from the exporter the amount deducted.”

§ 105-449.98. Duties of supplier concerning payments by distributors, exporters, and importers.

(a) As Fiduciary. — A supplier has a fiduciary duty to remit to the Secretary the amount of tax paid to the supplier by a licensed distributor, licensed exporter, or licensed importer. A supplier is liable for taxes paid to the supplier by a licensed distributor, licensed exporter, or licensed importer.

(b) Notification to Distributor or Exporter. — A supplier must notify a licensed distributor or licensed exporter that received motor fuel from the supplier during a reporting period of the number of taxable gallons received. The supplier must give this notice after the end of each reporting period and before the licensed distributor or licensed exporter must remit to the supplier the amount of tax due on the fuel.

(c) Notification to Department. — A supplier of motor fuel at a terminal must notify the Department within 10 business days after a return is due of any licensed distributors or licensed exporters that did not pay the tax due the supplier when the supplier filed the return. The notification must be transmitted to the Department in the form required by the Department.

(d) Payment Application. — A supplier that receives a payment of tax from a distributor or a licensed exporter may not apply the payment to debts for motor fuel purchased from the supplier. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 33.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, added “exporters, and importers” in the catchline; in subsection (a), added “licensed exporter, or licensed importer” to the end of both sentences; in subsection (b), added “or Exporter” to the

subcatchline, and added “or licensed exporter” following “Licensed distributor” twice; in subsection (c) added “business” and “or licensed exporter” to the first sentence; and in subsection (d), deleted “excise” preceding “tax”, and added “or a licensed exporter.”

§ 105-449.100. Terminal operator to file informational return showing changes in amount of motor fuel at the terminal.

A terminal operator must file a monthly informational return with the Secretary that shows the amount of motor fuel received or removed from the terminal during the month. The return is due by the 25th day of the month following the month covered by the return. The return must contain the following information and any other information required by the Secretary:

- (1) The number of gallons of motor fuel received in inventory at the terminal during the month and each position holder for the fuel.
- (2) The number of gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the fuel and the destination state of the fuel.
- (3) The number of gallons of motor fuel gained or lost at the terminal during the month. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 34.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted “Terminal operator to file informational return showing changes in amount of motor fuel at the terminal” for “Report by terminal operator” in the catchline; substituted “file a monthly informational return with the

Secretary that shows the amount of” for “make a monthly report to the Secretary of” in the first sentence, and substituted “return” for “report” and “report and” in the second sentence, inserted “The return” at the beginning of the third sentence, and inserted “of motor fuel” and “inventory at” in subdivision (2).

§ 105-449.101. Motor fuel transporter to file informational return showing deliveries of imported or exported motor fuel.

(a) Requirement. — A person that transports, by pipeline, marine vessel, railroad tank car, or transport truck, motor fuel that is being imported into this State or exported from this State must file a monthly informational return with the Secretary that shows motor fuel received or delivered for import or export by the transporter during the month. This requirement does not apply to a distributor that is not required to be licensed as a motor fuel transporter.

(b) Content. — The return required by this section is due by the 25th day of the month following the month covered by the return. The return must contain the following information and any other information required by the Secretary:

- (1) The name and address of each person from whom the transporter received motor fuel outside the State for delivery in the State, the amount of motor fuel received, the date the motor fuel was received, and the destination state of the fuel.
- (2) The name and address of each person from whom the transporter received motor fuel in the State for delivery outside the State, the amount of motor fuel delivered, the date the motor fuel was delivered, and the destination state of the fuel. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 35.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted “Motor fuel transporter to file informational return showing deliveries of imported or exported motor fuel” for “Reports by those that transport motor fuel” in the catchline; in subsection (a), substituted

“must file a monthly informational return with the Secretary that shows” for “must make a monthly report to the Secretary of” in the first sentence; and in subsection (b), substituted “return” for “report” and “report and”, and inserted “The return” in the beginning of the second sentence.

§ 105-449.102. Distributor to file return showing exports from a bulk plant.

(a) Return. — A distributor that exports motor fuel from a bulk plant located in this State must file a monthly return with the Secretary that shows the exports. The return is due by the 25th day of the month following the month covered by the return. The return serves as a claim for refund by the distributor for tax paid to this State on the exported motor fuel.

(b) Content. — The return must contain the following information and any other information required by the Secretary:

- (1) The number of gallons of motor fuel exported during the month.
- (2) The destination state of the motor fuel exported during the month.
- (3) A certification that the distributor has paid to the destination state of the motor fuel exported during the month, or will pay on a timely basis, the amount of tax due that state on the fuel. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 36.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted “Distributor to file return showing” for “Report of” in section catchline; added the subsection designation (a), and added the subcatchline “Return”; in subsection (a), in the first sentence, substituted “must file a monthly return with the Secretary

that shows” for “must make a monthly report to the Secretary of”, substituted “return” for “report” twice in the second sentence, and added the third sentence; added the subsection designation (b); added the subcatchline “Content”; and in subsection (b), inserted “The return” preceding “must contain the following”, and added subdivision (b)(3).

§ 105-449.104. Use of name and account number on return.

When a transaction with a person licensed under this Article is required to be reported on a return, the return must state the license holder’s name and the account number used by the Department to identify the license holder. The name of a license holder and the license holder’s account number is stated on the lists compiled under G.S. 105-449.77. (1995 (Reg. Sess., 1996), c. 647, s. 37.)

Editor’s Note. — Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 57, made this section effective July 1, 1996.

Part 5. Refunds.

§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, fuel unsalable for highway use, and undyed diesel fuel used in boats.

(a) **Exempt Fuel.** — A distributor may obtain a refund of tax paid by the distributor on motor fuel sold to a governmental unit whose use of motor fuel is exempt from the motor fuel excise tax. A governmental unit whose use of motor fuel is exempt from the motor fuel excise tax may obtain a refund of tax paid by it on motor fuel. A person may obtain a refund of tax paid by the person on exported fuel, including fuel whose shipping document shows this State as the destination state but was diverted to another state in accordance with the diversion procedures established by the Secretary.

(b) **Lost Fuel.** — A supplier, an importer, or a distributor that loses tax-paid motor fuel due to damage to a conveyance transporting the motor fuel, fire, a natural disaster, an act of war, or an accident may obtain a refund for the tax paid on the fuel.

(c) **Accidental Mixes.** — A person that accidentally combines any of the following may obtain a refund for the amount of tax paid on the fuel:

- (1) Dyed diesel fuel with tax-paid motor fuel.
- (2) Gasoline with diesel fuel.
- (3) Undyed diesel fuel with dyed kerosene.

(d) **Marina.** — A marina may obtain a refund of tax paid by the marina on undyed diesel fuel purchased for use in a boat or another marine vessel. The refund applies only to undyed diesel fuel delivered at the time of purchase into a storage facility that is marked "For Boat Use Only" or another phrase that clearly indicates the fuel is not to be used to operate a highway vehicle.

(e) **Refund Amount.** — The amount of a refund allowed under this section is the amount of tax paid, less the amount of any discount allowed on the fuel under G.S. 105-449.93. (1995, c. 390, s. 3; c. 523, ss. 32.1, 32.2; 1995 (Reg. Sess., 1996), c. 647, s. 38.)

Effect of Amendments. —

The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, deleted "used in boats" following "lost fuel" in the

catchline; and in subsection (e), added "less the amount of any discount allowed on the fuel under G.S. 105-449.93", and made a related change.

Part 6. Enforcement and Administration.

§ 105-449.115. Shipping document required to transport motor fuel by railroad tank car or transport truck.

(a) **Issuance.** — A person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document for its transportation that complies with this section. A terminal operator and the operator of a bulk plant must give a shipping document to the person who operates a railroad tank car or a transport truck into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) **Content.** — A shipping document issued by a terminal operator or the operator of a bulk plant must be machine-printed and must contain the following information and any other information required by the Secretary:

- (1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.
- (2) The date the motor fuel was loaded.
- (3) The gross gallons loaded.
- (4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.
- (5) If the document is issued by a terminal operator, the following information:
 - a. The net gallons loaded.
 - b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) **Reliance.** — A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser's agent concerning the destination state of the motor fuel. A purchaser is liable for any tax due as a result of the purchaser's diversion of fuel from the represented destination state.

(d) Duties of Transporter. — A person to whom a shipping document was issued must do all of the following:

- (1) Carry the shipping document in the conveyance for which it was issued when transporting the motor fuel described in it.
- (2) Show the shipping document to a law enforcement officer upon request when transporting the motor fuel described in it.
- (3) Deliver motor fuel described in the shipping document to the destination state printed on it unless the person does all of the following:
 - a. Notifies the Secretary before transporting the motor fuel into a state other than the printed destination state that the person has received instructions since the shipping document was issued to deliver the motor fuel to a different destination state.
 - b. Receives from the Secretary a confirmation number authorizing the diversion.
 - c. Writes on the shipping document the change in destination state and the confirmation number for the diversion.
- (4) Give a copy of the shipping document to the distributor or other person to whom the motor fuel is delivered.

(e) Duties of Person Receiving Shipment. — A person to whom motor fuel is delivered by railroad tank car or transport truck may not accept delivery of the motor fuel if the destination state shown on the shipping document for the motor fuel is a state other than North Carolina. To determine if the shipping document shows North Carolina as the destination state, the person to whom the fuel is delivered must examine the shipping document and must keep a copy of the shipping document. The person must keep a copy at the place of business where the motor fuel was delivered for 90 days from the date of delivery and must keep it at that place or another place for at least three years from the date of delivery. A person who accepts delivery of motor fuel in violation of this subsection is jointly and severally liable for any tax due on the fuel.

(f) Sanctions Against Transporter. — The following acts are grounds for a civil penalty payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue:

- (1) Transporting motor fuel in a railroad tank car or transport truck without a shipping document or with a false or an incomplete shipping document.
- (2) Delivering motor fuel to a destination state other than that shown on the shipping document.

The penalty imposed under this subsection is payable by the person in whose name the conveyance is registered, if the conveyance is a transport truck, and is payable by the person responsible for the movement of motor fuel in the conveyance, if the conveyance is a railroad tank car. The amount of the penalty depends on whether the person against whom the penalty is assessed has previously been assessed a penalty under this subsection. For a first assessment under this subsection, the penalty is one thousand five hundred dollars (\$1,500). For a second or subsequent assessment under this subsection, the penalty is seven thousand five hundred dollars (\$7,500). A penalty imposed under this subsection is in addition to any motor fuel tax assessed. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, ss. 39, 40.)

Effect of Amendments. — Session Laws 1995 (Reg. Sess., 1996), c. 647, ss. 39 and 40, effective July 1, 1996, added the last sentence of subsection (e); and in subsection (f), added “Against Transporter” in the subcatchline, in the second paragraph, deleted “the amount of fuel improperly transported or diverted and” following “penalty depends on” in the second sentence, substituted “one thousand five hundred dollars (\$1,500)” for

“the amount of motor fuel tax payable on the improperly transported or diverted motor fuel” in the third sentence, and substituted “seven thousand five hundred dollars (\$7,500)” for “the greater of one thousand dollars (\$1,000) or five times the amount of motor fuel tax payable on the improperly transported or diverted motor fuel” in the next to last sentence.

§ 105-449.118A. Civil penalty for refusing to allow the taking of a motor fuel sample.

A person who refuses to allow the taking of a motor fuel sample is subject to a civil penalty of one thousand dollars (\$1,000). The penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. If the refusal is for a sample to be taken from a vehicle, the penalty is payable by the person in whose name the vehicle is registered. If the refusal is for a sample to be taken from any other storage tank or container, the penalty is payable by the owner of the container. (1995 (Reg. Sess., 1996), c. 647, s. 41.)

Editor’s Note. — Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 57, made this section effective July 1, 1996.

§ 105-449.120. Acts that are misdemeanors.

(a) Class 1. — A person who commits any of the following acts is guilty of a Class 1 misdemeanor:

- (1) Fails to obtain a license required by this Article.
- (2) Willfully fails to file a return required by this Article.
- (3) Willfully fails to pay a tax when due under this Article. Failure to comply with a requirement of a supplier to remit tax payable to the supplier by electronic funds transfer is considered a failure to make a timely payment.
- (3a) Willfully fails to pay a tax collected on behalf of a destination state to that state when it is due.
- (4) Makes a false statement in an application, a return, or a statement required under this Article.
- (5) Makes a false statement in an application for a refund.
- (6) Fails to keep records as required under this Article.
- (7) Refuses to allow the Secretary or a representative of the Secretary to examine the person’s books and records concerning motor fuel.
- (8) Fails to disclose the correct amount of motor fuel sold or used in this State.
- (9) Fails to file a replacement bond or an additional bond as required under this Article.
- (10) Fails to show or give a shipping document as required under this Article.
- (11) Willfully refuses to allow a licensed distributor, a licensed exporter, or a licensed importer to defer payment of tax to the supplier, as required by G.S. 105-449.91.

- (12) Willfully refuses to allow a licensed distributor or a licensed importer to take the discount allowed by G.S. 105-449.93 when remitting tax to the supplier.
- (b) Class 2. — A person who commits any of the following acts is guilty of a Class 2 misdemeanor:
- (1) Knowingly dispenses non-tax-paid motor fuel into the supply tank of a highway vehicle.
 - (2) Knowingly allows non-tax-paid fuel to be dispensed into the supply tank of a highway vehicle. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 42.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted “file a return” for “make a report” in subdivision (a)(2), added subdivision (a)(3a), substituted “return” for “report” in subdivision (a)(4), and added subdivisions (a)(11) and (a)(12).

§ 105-449.121. Record-keeping requirements; inspection authority.

(a) What Must Be Kept. — A person who is subject to audit under subsection (b) of this section must keep a record of all shipping documents or other documents used to determine information the person provides in a return or to determine the person’s motor fuel transactions. The records must be kept for three years from the due date of the return to which the records apply or, if the records apply to a transaction not required to be reported in a return, for three years from the date of the transaction.

(b) Inspection. — The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

- (1) Audit a distributor or a person who is required to have or elects to have a license under this Article.
- (2) Audit a distributor or a motor fuel user that is not licensed under this Article.
- (3) Examine a tank or other equipment used to make, store, or transport motor fuel, diesel dyes, or diesel markers.
- (4) Take a sample of a product from a vehicle, a tank, or another container in a quantity sufficient to determine the composition of the product.
- (5) Stop a vehicle for the purpose of taking a sample of motor fuel from the vehicle. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 43.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, in subsection (a), in the first sentence, substituted “subject to audit under subsection (b) of this section” for “required to submit a report or file a return under Part 4 of this Article”, and substituted “information the person provides in a return or to determine the

person’s motor fuel transactions” for “the information provided in the report or return”; in the second sentence, deleted “report or” following “from the due date of the”, and added “or, if the records apply to a transaction not required to be reported in a return, for three years from the date of the transaction.”

ARTICLE 36D.

*Alternative Fuel.***§ 105-449.130. Definitions.**

The following definitions apply in this Article:

- (1) Alternative fuel. — A combustible gas or liquid that can be used to generate power to operate a highway vehicle and that is not subject to tax under Article 36C of this Chapter.
- (1a) Bulk-end user. — A person who maintains storage facilities for alternative fuel and uses part or all of the stored fuel to operate a highway vehicle.
- (2) Highway. — Defined in G.S. 20-4.01(13).
- (3) Highway vehicle. — Defined in G.S. 105-449.60.
- (4) Motor fuel. — Defined in G.S. 105-449.60.
- (5) Motor fuel rate. — Defined in G.S. 105-449.60.
- (6) Provider of alternative fuel. — A person who does one or more of the following:
 - a. Acquires alternative fuel for sale or delivery to a bulk-end user or a retailer.
 - b. Maintains storage facilities for alternative fuel, part or all of which the person uses or sells to someone other than a bulk-end user or a retailer to operate a highway vehicle.
 - c. Sells alternative fuel and uses part of the fuel acquired for sale to operate a highway vehicle by means of a fuel supply line from the cargo tank of the vehicle to the engine of the vehicle.
 - d. Imports alternative fuel to this State, by a means other than the usual tank or receptacle connected with the engine of a highway vehicle, for use by that person to operate a highway vehicle.
- (7) Retailer. — A person who maintains storage facilities for alternative fuel and who sells the fuel at retail or dispenses the fuel at a retail location to operate a highway vehicle. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 44.)

Editor's Note. —

The subdivision designations (1a), (6), and (7) were assigned by the Revisor of Statutes, the designations in Session Laws 1995 (Reg. Sess., 1996), c. 647, s. 44, having been (2), (7), and (8), respec-

tively. The remaining subdivision designations are unchanged.

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, added present subdivisions (1a), (6) and (7).

§ 105-449.131. List of persons who must have a license.

A person may not engage in business in this State as any of the following unless the person has a license issued by the Secretary authorizing the person to engage in that business:

- (1) A provider of alternative fuel.
- (2) A bulk-end user.
- (3) A retailer. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 45.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, deleted “of alternative fuel that uses part or all of the fuel in a

highway vehicle” in subdivision (2), and deleted “of alternative fuel that sells part or all of the fuel for use in a highway vehicle” in subdivision (3).

§ 105-449.134. Denial or cancellation of license.

The Secretary may deny an application for a license or cancel a license under this Article for the same reasons that the Secretary may deny an application for a license or cancel a license under Article 36C of this Chapter. The procedure in Article 36C for cancelling a license applies to the cancellation of a license under this Article. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 46.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, substituted “may” for “can”

following “same reasons that the Secretary” in the first sentence.

§ 105-449.136. Tax on alternative fuel.

A tax at the motor fuel rate is imposed on liquid alternative fuel used to operate a highway vehicle by means of a vehicle supply tank that stores fuel only for the purpose of supplying fuel to operate the vehicle. A tax at the equivalent of the motor fuel rate is imposed on all other alternative fuel used to operate a highway vehicle. The Secretary must determine the equivalent rate. The exemptions from the tax on motor fuel in G.S. 105-449.88(2), (3), and (4) apply to the tax imposed by this section. The refunds for motor fuel tax allowed by Part 5 of Article 36C of this Chapter apply to the tax imposed by this section, except that the refund allowed by G.S. 105-449.107(b) for certain vehicles that use power takeoffs does not apply to a vehicle whose use of alternative fuel is taxed on the basis of miles driven. The proceeds of the tax imposed by this section must be allocated in accordance with G.S. 105-449.125. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 47.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, added the first sentence, inserted “all other” in the second sentence, and in the next to last sentence added “except that the refund allowed by

G.S. 105-449.107(b) for certain vehicles that use power takeoffs does not apply to a vehicle whose use of alternative fuel is taxed on the basis of miles driven”, and made a related change.

§ 105-449.138. Requirements for bulk-end users and retailers.

(a) **Informational Return.** — A bulk-end user and a retailer must file a quarterly informational return with the Secretary. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return.

The return must give the following information and any other information required by the Secretary:

- (1) The amount of alternative fuel received during the quarter.
- (2) The amount of alternative fuel sold or used during the quarter.

(b) **Storage.** — A storage facility used by a bulk-end user or a retailer must be marked in a manner similar to that required for

diesel fuel by G.S. 105-449.87(c) if the alternative fuel stored in the facility is to be used for a purpose other than to operate a highway vehicle. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 48.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, in subsection (a), substituted “Informational Return” for “Reports” in the subsection catchline, in the first sentence, deleted “of alternative fuel that uses part or all of the fuel in a highway vehicle” following “A bulk-end user”, deleted “of alternative fuel that

sells part or all of the fuel for use in a highway vehicle” preceding “must file a quarterly”, substituted “informational return” for “report”, and substituted “return” for “report” twice in the second sentence and once in the second paragraph; and deleted “of alternative fuel” following “bulk-end user” and “or a retailer” in subsection (b).

§ 105-449.139. Miscellaneous provisions.

(a) Records. — A license holder must keep a record of all documents used to determine the information provided in a return filed under this Article. The records must be kept for three years from the due date of the return to which the records apply. The records are open to inspection during business hours by the Secretary or a person designated by the Secretary.

(b) Violations. — The offenses listed in subdivisions (1) through (9) of G.S. 105-449.120 apply to this Article. In applying those offenses to this Article, references to “this Article” are to be construed as references to Article 36D and references to “motor fuel” are to be construed as references to alternative fuel.

(c) Lists. — The Secretary must give a list of licensed alternative fuel providers to each licensed bulk-end user and licensed retailer. The Secretary must also give a list of licensed bulk-end users and licensed retailers to each licensed alternative fuel provider. A list must state the name, account number, and business address of each license holder on the list. The Secretary must send an annual update of a list to each license holder, as appropriate. (1995, c. 390, s. 3; 1995 (Reg. Sess., 1996), c. 647, s. 49.)

Effect of Amendments. — The 1995 (Reg. Sess., 1996) amendment, effective July 1, 1996, added subsection (c).

SUBCHAPTER VIII. LOCAL GOVERNMENT SALES AND USE TAX.

ARTICLE 39.

Local Government Sales and Use Tax.

§ 105-465. County election as to adoption of local sales and use tax.

The board of elections of any county, upon the written request of the board of county commissioners, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen percent (15%) of the total number of votes cast in the county, at the last preceding election for the office of Governor, shall call a

special election for the purpose of submitting to the voters of the county the question of whether a one percent (1%) sales and use tax will be levied.

The special election shall be held under the same rules applicable to the election of members of the General Assembly. No new registration of voters shall be required. All qualified voters in the county who are properly registered not later than 21 days (excluding Saturdays and Sundays) prior to the election shall be entitled to vote at the election. The county board of elections shall give at least 20 days' public notice prior to the closing of the registration books for the special election.

The county board of elections shall prepare ballots for the special election. The question presented on the ballot shall be "FOR one percent (1%) local sales and use tax on items subject to State sales and use tax at the general State rate and on food" or "AGAINST one percent (1%) local sales and use tax on items subject to State sales and use tax at the general State rate and on food".

The county board of elections shall fix the date of the special election, except that the special election shall not be held on the date or within 60 days of any biennial election for county officers, nor within one year from the date of the last preceding special election under this section. (1971, c. 77, s. 2; 1981, c. 560, s. 2; 1991, c. 689, s. 315; 1996, 2nd Ex. Sess., c. 13, s. 1.2.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, §. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 1.7, provides: "Approval under Article 39, 40, or 42 of Chapter 105 of the General Statutes or under the Mecklenburg County Sales and Use Tax Act, Chapter 1096 of the 1967 Session Laws, as amended, of local sales and use taxes on items subject to State sales and use tax at the general State rate constitutes approval of local sales and use taxes on food."

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment

or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective January 1, 1997, and applicable to sales made on or after that date, in the first paragraph deleted "thereof" preceding "or upon receipt," deleted "as herein-after provided" preceding "will be levied"; in the second paragraph deleted "and regulations" following "same rules," substituted "the election" for "said election" in the third sentence; rewrote the third paragraph; and in the last paragraph substituted "election, except" for "election; provided, however," inserted "or within 60 days," and deleted "nor within 60 days thereof" preceding "nor within one year."

§ 105-467. Scope of sales tax.

The sales tax that may be imposed under this Article is limited to a tax at the rate of one percent (1%) of the following:

- (1) The sales price of tangible personal property subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(1) and (a)(4b).
- (2) The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(2).

- (3) The gross receipts derived from the rental of any room or other accommodations subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(3).
- (4) The gross receipts derived from services rendered by laundries, dry cleaners, and other businesses subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).
- (5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in this section.

The State exemptions and exclusions contained in G.S. 105-164.13 and the State refund provisions contained in G.S. 105-164.14 apply to the local sales and use tax authorized to be levied and imposed under this Article. A taxing county — may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax.

The local sales tax authorized to be imposed and levied under this Article applies to taxable transactions by retailers whose place of business is located within the taxing county. For the purpose of this Article, the situs of a transaction is the location of the retailer's place of business. (1971, c. 77, s. 2; 1983 (Reg. Sess., 1984), c. 1097, s. 9; 1987, c. 557, s. 7; c. 832, s. 4; 1989, c. 692, s. 3.7; 1991, c. 689, s. 316; 1996, 2nd Ex. Sess., c. 13, s. 1.3.)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective

January 1, 1997, and applicable to sales made on or after that date, in the introductory language substituted "that" for "which," and inserted "the following"; in subdivision (1) deleted "now" preceding "subject," substituted "(a)(4b)" for "(4b)"; in subdivision (3) deleted "lodging furnished by any hotel, motel, inn, tourist camp or," substituted "other accommodations" for "other similar accommodations now" and deleted "and" at the end; deleted "now" preceding "subject" in subdivision (4); added subdivision (5); deleted "subdivisions (1) through (4) of" preceding "this section" in the second paragraph; rewrote the third and last paragraphs; and made punctuation changes in subdivisions (1), (2), and (3).

§ 105-468. Scope of use tax.

The use tax authorized by this Article is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold in the taxing county but is used, consumed, or stored for use or consumption in the taxing county. The tax applies to the same items that are subject to tax under G.S. 105-467.

Every retailer who is engaged in business in this State and in the taxing county and is required to collect the use tax levied by G.S. 105-164.6 shall collect the one percent (1%) use tax when the property is to be used, consumed, or stored in the taxing county. The use tax contemplated by this section shall be levied against the purchaser, and the purchaser's liability for the use tax shall be extinguished only upon payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the Secretary, where the retailer is not required to collect the tax.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser, either in another taxing county within the State, or in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county. The Secretary may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary. The use tax levied under this Article is not subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 1979, 2nd Sess., c. 1100, s. 2; 1989, c. 692, s. 3.8; 1991, c. 689, s. 317; 1996, 2nd Ex. Sess., c. 13, s. 1.4.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective January 1, 1997, and applicable to sales made on or after that date, rewrote

the first paragraph; in the second paragraph, in the first sentence, inserted "who is," deleted "also" preceding "collect the one percent," substituted "the property is to be used, consumed, or stored in the taxing county" for "such property is to be used, consumed or stored in the taxing county, one percent (1%) use tax to be collected concurrently with the State's use tax; but no retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to collect the one percent (1%) use tax," and in the last sentence deleted "of Revenue, or to the taxing county, as appropriate" following "Secretary"; and in the last paragraph deleted "of Revenue or to the taxing county, as appropriate" and "of Revenue or the taxing county, as appropriate" following "Secretary."

§ 105-469. Secretary to collect and administer local sales and use tax.

(a) The Secretary shall collect and administer a tax levied by a county pursuant to this Article.

(b) The Secretary shall require retailers who collect use tax on sales to North Carolina residents to ascertain the county of residence of each buyer and provide that information to the Secretary along with any other information necessary for the Secretary to allocate the use tax proceeds to the correct taxing county. (1971, c. 77, s. 2; 1973, c. 476, s. 193; 1993, c. 485, s. 23; 1996, 2nd Ex. Sess., c. 14, s. 12.)

Editor's Note. — Session Laws 1996, Second Extra Session, c. 14, s. 26, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

"Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments. — The 1996 Second Extra Session amendment, effective August 1, 1996, added the subsection (a) designation and added subsection (b).

ARTICLE 40.

Supplemental Local Government Sales and Use Taxes.

§ 105-482. Limitations.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1.5, effective January 1, 1997, and applicable to sales made on or after that date, amends Session Laws 1967, c. 1096, s. 4, by deleting the word "and" before subdivision (4), by changing the period at the end of subdivision (4) to a semicolon and adding the word "and", and by adding subdivision (5), which reads "The sales price of food and other items that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 1.7, provides: "Approval under Article 39, 40, or 42 of Chapter 105 of the General Statutes or under the Mecklenburg County Sales and Use Tax Act, Chapter 1096 of the 1967 Session Laws, as amended, of local sales and use

taxes on items subject to State sales and use tax at the general State rate constitutes approval of local sales and use taxes on food."

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1996, Second Extra Session, c. 13, s. 1.6, amends Session Laws 1967, c. 1096, s. 5, by substituting "The use tax that Mecklenburg County may impose under this division is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold but is used, consumed, or stored for use or consumption in Mecklenburg County. The tax applies to the same items that are subject to tax under Section 4 of this act" for the first sentence of section 5.

§ 105-486. Distribution of additional taxes.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1.5, effective January 1, 1997, and applicable to sales made on or after that date, amends Session Laws 1967, c. 1096, s. 4, by deleting the word “and” before subdivision (4), by changing the period at the end of subdivision (4) to a semicolon and adding the word “and”, and by adding subdivision (5), which reads “The sales price of food and other items that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.”

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Ses-

sion, c. 13, s. 10.1, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.”

Session Laws 1996, Second Extra Session, c. 13, s. 1.6, amends Session Laws 1967, c. 1096, s. 5, by substituting “The use tax that Mecklenburg County may impose under this division is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold but is used, consumed, or stored for use or consumption in Mecklenburg County. The tax applies to the same items that are subject to tax under Section 4 of this act” for the first sentence of section 5.

ARTICLE 42.

Additional Supplemental Local Government Sales and Use Taxes.

§ 105-497. Limitations.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1.5, effective January 1, 1997, and applicable to sales made on or after that date, amends Session Laws 1967, c. 1096, s. 4, by deleting the word “and” before subdivision (4), by changing the period at the end of subdivision (4) to a semicolon and adding the word “and”, and by adding subdivision (5), which reads “The sales price of food and other items that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.”

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Ses-

sion, c. 13, s. 10.1, provides: “This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.”

Session Laws 1996, Second Extra Session, c. 13, s. 1.6, amends Session Laws 1967, c. 1096, s. 5, by substituting “The use tax that Mecklenburg County may impose under this division is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold but is used, consumed, or stored for use or consumption in Mecklenburg County. The tax applies to the same items that are subject to tax under Section 4 of this act” for the first sentence of section 5.

§ 105-498. Levy and collection of additional taxes.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1.7, provides: "Approval under Article 39, 40, or 42 of Chapter 105 of the General Statutes or under the Mecklenburg County Sales and Use Tax Act, Chapter 1096 of the 1967 Session Laws, as amended, of local sales and use taxes on items subject to State sales and use tax at the general State rate constitutes approval of local sales and use taxes on food."

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act

shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Session, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

§ 105-501. Distribution of additional taxes.

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 13, s. 1.5, effective January 1, 1997, and applicable to sales made on or after that date, amends Session Laws 1967, c. 1096, s. 4, by deleting the word "and" before subdivision (4), by changing the period at the end of subdivision (4) to a semicolon and adding the word "and", and by adding subdivision (5), which reads "The sales price of food and other items that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Session Laws 1996, Second Extra Session, c. 13, s. 1, provides that this act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

Session Laws 1996, Second Extra Ses-

sion, c. 13, s. 10.1, provides: "This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1996, Second Extra Session, c. 13, s. 1.6, amends Session Laws 1967, c. 1096, s. 5, by substituting "The use tax that Mecklenburg County may impose under this division is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold but is used, consumed, or stored for use or consumption in Mecklenburg County. The tax applies to the same items that are subject to tax under Section 4 of this act" for the first sentence of section 5.

§ 105-503: Recodified as § 115C-440.1 by Session Laws 1995 (Regular Session, 1996), c. 666, s. 4, effective July 1, 1996.

Chapter 105A.

Setoff Debt Collection Act.

Article 1.

In General.

Sec.

105A-2. Definitions.

ARTICLE 1.

In General.

§ 105A-2. Definitions.

As used in this Article:

(1) "Claimant agency" means and includes:

- a. The State Education Assistance Authority as enabled by Article 23 of Chapter 116 of the General Statutes;
- b. The North Carolina Department of Human Resources when in the exercise of its authority to collect health profession student loans made pursuant to G.S. 131-121;
- c. The North Carolina Department of Human Resources when in the performance of its duties under the Medical Assistance Program enabled by Chapter 108A, Article 2, Part 6, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Medical Assistance Program collection functions;
- d. The North Carolina Department of Human Resources when in the performance of its duties, under the Child Support Enforcement Program as enabled by Chapter 110, Article 9 and Title IV, Part D of the Social Security Act to obtain indemnification for past paid public assistance or to collect child support arrearages owed to an individual receiving program services and any county operating the program at the local level, when and only to the extent that the county is engaged in the performance of those same duties;
- e. The University of North Carolina, including its constituent institutions as specified by G.S. 116-2(4);
- f. The University of North Carolina Hospitals at Chapel Hill in the conduct of its financial affairs and operations pursuant to G.S. 116-37;
- g. The Board of Governors of the University of North Carolina and the State Board of Education through the College Scholarship Loan Committee when in the performance of its duties of administering the Scholarship Loan Fund for Prospective College Teachers enabled by Chapter 116, Article 5;
- h. The Office of the North Carolina Attorney General on behalf of any State agency when the claim has been reduced to a judgment;

- i. The State Board of Community Colleges through community colleges as enabled by Chapter 115D in the conduct of their financial affairs and operations;
- j. State facilities as listed in G.S. 122C-181(a), School for the Deaf at Morganton, North Carolina Sanatorium at McCain, Western Carolina Sanatorium at Black Mountain, Eastern North Carolina Sanatorium at Wilson, and Gravelly Sanatorium at Chapel Hill under Chapter 143, Article 7; Governor Morehead School under Chapter 115, Article 40; Central North Carolina School for the Deaf under Chapter 115, Article 41; Wright School for Treatment and Education of Emotionally Disturbed Children under Chapter 122C; and these same institutions by any other names by which they may be known in the future;
- k. The North Carolina Department of Revenue;
- l. The Administrative Office of the Courts;
- m. The Division of Forest Resources of the Department of Environment, Health, and Natural Resources;
- n. The Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan, established in Article 3 of General Statutes Chapter 135;
- o. The State Board of Education through the Superintendent of Public Instruction when in the performance of his duties of administering the Scholarship Loan Fund for Prospective Teachers enabled by Chapter 115C, Article 32A and the scholarship loan and grant programs enabled by Chapter 115C, Article 24C, Part 1;
- p. The Board of Trustees of the Teachers' and State Employees' Retirement System and the Board of Trustees of the Local Governmental Employees' Retirement System in the performance of their duties pursuant to Chapters 120, 128, 135 and 143 of the General Statutes;
- q. The North Carolina Teaching Fellows Commission in the performance of its duties pursuant to Chapter 115C, Article 24C, Part 2;
- r. The North Carolina Department of Human Resources when in the performance of its collection duties for intentional program violations and violations due to inadvertent household error under the Food Stamp Program enabled by Chapter 108A, Article 2, Part 5, and any county operating the same Program at the local level, when and only to the extent such a county is in the performance of Food Stamp Program collection functions.

The North Carolina Department of Human Resources when, in the performance of its duties under the Aid to Families with Dependent Children Program or the Aid to Families with Dependent Children — Emergency Assistance Program provided in Part 2 of Article 2 of Chapter 108A or the Work First Cash Assistance Program established pursuant to the federal waivers received by the Department on February 5, 1996, or under the State-County Special Assistance for Adults Program provided in Part 3 of Article 2 of

Chapter 105B.

Defaulted Student Loan Recovery Act.

Article 1.

Withholding of Personal Earnings.

Sec.

105B-4. Prohibited conduct by payor;
civil penalty.

ARTICLE 1.

Withholding of Personal Earnings.

§ 105B-4. Prohibited conduct by payor; civil penalty.

(a) Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the Authority joining the payor as a third party defendant, with 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to commence withholding and shall be held liable to the Authority for any amount which such payor should have withheld, except that such payor shall not be required to vary his normal pay or disbursement cycles in order to comply with these provisions.

(b) A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any debtor because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty to be paid to the county school fund. For a first offense, the civil penalty shall be one hundred dollars (\$100.00) and one thousand dollars (\$1,000), respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by a debtor as a result of the violation, and a debtor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this subsection shall be one year pursuant to G.S. 1-54.

(c) Any payor who withholds the sum provided in any notice or order to the payor shall not be liable for any penalties under this section. (1989, ch. 475, s. 1.)

Editor's Note. — This section has been set out above to correct a printing error in the main volume.

STATE OF NORTH CAROLINA

DEPARTMENT OF JUSTICE

Raleigh, North Carolina

November 1, 1996

I, Michael F. Easley, Attorney General of North Carolina, do hereby certify that the foregoing 1996 Cumulative Supplement to the General Statutes of North Carolina was prepared and published by Michie under the supervision of the Department of Justice of the State of North Carolina.

MICHAEL F. EASLEY

Attorney General of North Carolina



- Chapter 108A, it seeks to collect public assistance payments obtained through an intentional false statement, intentional misrepresentation, intentional failure to disclose a material fact, or inadvertent household error;
- s. The Employment Security Commission of North Carolina.
 - t. Any State agency in the collection of salary overpayments from former employees.
 - u. The State Board of Education through the Superintendent of Public Instruction when in the performance of his duties of administering the program under which the State encourages participation in the National Board for Professional Teaching Standards (NBPTS) Program, enabled by Section 19.28 of Chapter 769 of the 1993 Session Laws.
- (2) "Debtor" means any individual owing money to or having a delinquent account with any claimant agency which obligation has not been adjudicated satisfied by court order, set aside by court order, or discharged in bankruptcy.
 - (3) "Debt" means any liquidated sum due and owing any claimant agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum.
 - (4) "Department" means the North Carolina Department of Revenue.
 - (5) "Refund" means any individual's North Carolina income tax refund.
 - (6) "Net proceeds collected" means gross proceeds collected through final setoff against a debtor's refund minus any collection assistance fee charged by the Department. (1979, c. 801, s. 94; 1981, c. 724; 1983, c. 922, s. 21.11; 1983 (Reg. Sess., 1984), c. 1034, s. 10.2; 1985, c. 589, s. 33; c. 649, s. 6; c. 747; 1985 (Reg. Sess., 1986), c. 1014, s. 63(e), (f); 1987, c. 564, s. 18; c. 578, ss. 1, 2; c. 856, s. 12; 1989, c. 141, s. 2; c. 539, s. 1; c. 699; c. 727, s. 30; c. 770, s. 75.2; 1993 (Reg. Sess., 1994), c. 735, s. 1; 1995, c. 227, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 24.30(d).)

Editor's Note. —

Session Laws 1996, Second Extra Session, c. 18, s. 24.30, provides that the Department of Human Resources shall immediately elect the optional Aid to Families with Dependent Children Fraud Control program pursuant to 45 C.F.R. 235.112; that this program is deemed to apply to Work First Cash Assistance, effective July 1, 1996, as well as to AFDC, pursuant to the federal waivers received by the Department on February 5, 1996; that the Department shall award incentive bonuses to counties for claims recouped; that the Department shall implement a statewide automated system to track fraud claims; and that persons charged with or suspected

of AFDC fraud are not subjected to certain actions.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments. —

The 1996 Second Extra Session amendment, effective July 1, 1996, in subdivision (1)r., in the first paragraph substituted "collection duties for intentional program violations and violations due to inadvertent household error" for "intentional program violation collection duties," deleted "intentional program vi-

olation" preceding "collection functions," and in the second paragraph inserted "or the Work First Cash Assistance Program established pursuant to the federal waiv-

ers received by the Department on February 5, 1996," and inserted "or inadvertent household error" and made related changes.